

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION**

|                       |   |                            |
|-----------------------|---|----------------------------|
| WILLIE T. DONALD,     | ) |                            |
|                       | ) |                            |
| Plaintiff,            | ) |                            |
|                       | ) |                            |
| v.                    | ) | No. 2:17-CV-00032-TLS      |
|                       | ) |                            |
| BRUCE OUTLAW, et al., | ) | Hon. Theresa L. Springmann |
|                       | ) | District Judge             |
|                       | ) |                            |
| Defendants.           | ) |                            |

**PLAINTIFF’S DESIGNATION OF EVIDENCE  
IN OPPOSITION TO SUMMARY JUDGMENT**

Plaintiff respectfully submits the following designation of evidence for exhibits referenced in Plaintiff’s Responses to Defendants’ Statements of Material Facts, and in Plaintiff’s Statement of Additional Material Facts:

Ex. 1—Willie T. Donald Deposition Transcript

Ex. 2—Post-Tribune Article

Ex. 3—Wade Letter

Ex. 4—Bruce Outlaw Deposition Transcript

Ex. 5—Record of Proceedings Vol. III

Ex. 6—Record of Proceedings Vol. I

Ex. 7—Rhonda Williams Offense Report

Ex. 8—Rhonda Williams Deposition Transcript

Ex. 9—Kim Belinsky Statement

Ex. 10—Kim Belinsky Deposition Transcript

- Ex. 11—Record of Proceedings Vol. II
- Ex. 12—Bernard Jimenez Death Report
- Ex. 13—1993 Post-Conviction Hearing Transcript
- Ex. 14—Mary Banks Deposition Transcript
- Ex. 15—David Wade Deposition Transcript
- Ex. 16—Clarence Hightower Deposition Transcript Vol. I
- Ex. 17—Search Warrant and Affidavit
- Ex. 18—Donald 1989 Booking Photo
- Ex. 19—Photo Array
- Ex. 20—Rhonda Williams Photobook Identification Form
- Ex. 21—Kim Belinsky Photobook Identification Form
- Ex. 22—Sharon Cummings Affidavit
- Ex. 23—Bench Warrant
- Ex. 24—Scott King Deposition Transcript Vol. II
- Ex. 25—Physical Line-Up Form
- Ex. 26—Carolyn Beeler Affidavit
- Ex. 27—2014 Post-Conviction Hearing Transcript
- Ex. 28—Goldblatt's Timecards
- Ex. 29—City of Gary Responses to Requests for Admission
- Ex. 30—Outlaw Responses to Requests for Admission
- Ex. 31—Rhonda Williams Statement
- Ex. 32—Record of Proceedings Vol. VI



Ex. 33—Scott King Deposition Transcript Vol. I

Ex. 34—Record of Proceedings Vol. IV

Ex. 35—Order vacating Plaintiff's convictions

Ex. 36—Mitchell Memo

Ex. 37—Williams Criminal Deposition Transcript

Ex. 38—Order dismissing charges

Ex. 39—Bruce Outlaw Supplemental Responses to Interrogatories

Ex. 40—GPD Manual of Procedures

Ex. 41—IACP Review of GPD

Ex. 42—Brian Evans (30(b)(6)) Deposition Transcript

Ex. 43—Toni Dudley Deposition Transcript

Ex. 44—Clarence Hightower Deposition Transcript Vol. II

Ex. 45—FBI File on GPD

Ex. 46—Jelks Complaint

Ex. 47—Fazekas GCSC file

Ex. 48—Papadakis GCSC file

Ex. 49—Escalante GCSC file

Ex. 50—Duncan GCSC file

Ex. 51—Bell GCSC file

Ex. 52—Gault GCSC file

Ex. 53—Gordon GCSC file

Ex. 54—McKinney GCSC file

Ex. 55—Wilson GCSC file

Ex. 56—Branson GCSC file

Ex. 57—Franklin GCSC file

Ex. 58—ISP Technical Assessment

Ex. 59—Sonya Thomas Deposition Transcript

Ex. 60—Williams Affidavit

Ex. 61—Jimenez Death Report

Ex. 62—Jimenez Offense Report

Ex. 63—Arrest Report

RESPECTFULLY SUBMITTED,

/s/ Sam Heppell  
Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

I, Sam Heppell, an attorney, certify that on October 19, 2022 I filed a true, correct and complete copy of the foregoing via the Court's CM/ECF system thereby serving a copy on all counsel of record.

/s/ Sam Heppell  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 32

## Plaintiff's Summary Judgment Response



1 Q Did you ever go down to the station and give a  
2 statement to the effect of this conversation?

3 A No.

4 Q Did anyone ever tell you that you shouldn't or  
5 that you couldn't?

6 A No.

7 Q And isn't it true that the first time you told  
8 Detective Outlaw -- strike that, please. When  
9 was the first time you told Detective Outlaw  
10 about this car dealership business?

11 A On the 4th.

12 Q On the 4th?

13 A When he came with the search warrant.

14 Q After you had met with your brother's defense  
15 attorney, correct?

16 A Yes.

17 Q And after you and other family members had  
18 been in that house for seventeen hours after  
19 the arrest of your brother prior to the  
20 execution of the search warrant, correct?

21 A Correct.

22 Q The week of February 27th, how many times were  
23 you out shopping for vehicles that week alone?

24 A Twice.

25



720

Clarin Clerk's Office

MAY 23 1997

Anna M. Anton  
CLERK LAKE SUPERIOR COURT

1251

VANES 001260

1 BY MR. BENSON:

2 Thank you very much.

3 REDIRECT EXAMINATION

4 BY

5 MR. KING

6 Q When you were in my office with other family  
7 members and telling me about your brother  
8 being arrested, did I at any point pull out a  
9 bag or some kind of device and say let's use  
10 the old car-buying alibi?

11 BY MR. BENSON:

12 I'd object, Judge. Could we  
13 approach, please?

14 BY THE COURT:

15 Well, you can't do that or you're getting  
16 into Mr. King being a witness in the case.

17 BY MS. LAKE:

18 It's also a leading question, Judge.

19 BY THE COURT:

20 And I would sustain the objection.

21 BY MR. KING:

22 No, no, the prosecution did that and I'm  
23 going to present the entire set of facts.

24 BY MR. BENSON:

25 I would object and ask to approach, Judge.

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1 BY THE COURT:

2 I don't think we need to.

3 BY MR. BENSON:

4 I'd ask Mr. King to approach the bench,  
5 please.

6 BY THE COURT:

7 All right; all right; all right.

8  
9 WHEREUPON THE FOLLOWING DISCUSSION WAS  
10 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
11 THE JURY:

12  
13 BY THE COURT:

14 What door do you think has been opened  
15 here?

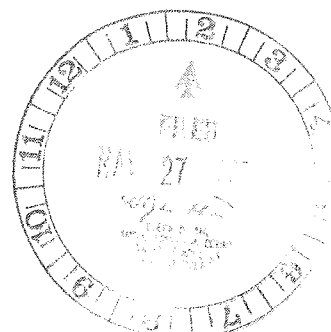
16 BY MR. KING:

17 You came up with this "seventeen hours  
18 after you had been to the defense attorney,"  
19 now, I am entitled to ask this woman if in any  
20 way, shape or form the testimony she has given  
21 has been manufactured. That's the clear  
22 import of what the prosecutor for whatever  
23 reason is trying to come up with, and I'm  
24 entitled to --

25 BY THE COURT:

722

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VANES 001262



1                   If it is, I missed it. But we can't get  
2                   into specifics of conversations you may have  
3                   had with the --

4       BY MR. KING:

5                   Then he shouldn't go into these areas. He  
6                   should think.

7       BY THE COURT:

8                   But he did it without attributing any  
9                   statements to you. Can't you just ask her in  
10                  general whether she received any motivation to  
11                  do anything from the visit to your office, vis  
12                  a vis this alibi?

13      BY MR. KING:

14                  All right, let me rephrase it.

15      BY MR. BENSON:

16                  Judge, the defense is calling for an  
17                  answer based on --

18      BY THE COURT:

19                  He's asking her, "Did you get any  
20                  information?"

21      BY MS. LAKE:

22                  He's going to be making himself a witness  
23                  in this case when he starts asking about the  
24                  conversations.

25      BY THE COURT:



1 Well, I thought we were going to avoid  
2 conversations; that's what I just said.

3 BY MR. BENSON:

4 Well, he just asked if she received any  
5 information; that calls directly for the  
6 essence of the conversation.

7 BY MR. KING:

8 Then he shouldn't have gone into the area.

9 BY MR. BENSON:

10 When he talked about coming to the office  
11 on direct examination, he started that.

12 BY THE COURT:

13 And then you talked about her being in the  
14 office.

15 BY MR. BENSON:

16 That's because he opened the door; I never  
17 could have got into it.

18 BY THE COURT:

19 Who gets the last word then is the  
20 question.

21 BY MR. KING:

22 By the way, let's have one lawyer for the  
23 State in the future here per witness on  
24 objections and such.

25 BY MR. BENSON:

1           You can't let him talk about a  
2           conversation he had. I never talked about a  
3           conversation, I never referred to any  
4           statements that Attorney King said do this or  
5           do that.

6       BY THE COURT:

7           What you have got a right to get into here  
8           is her motivation, this witness's motivation  
9           and the fact of whether or not this alibi that  
10          you point out she didn't think of to tell  
11          Outlaw was derived from some external source,  
12          that somebody put the idea in her mind.

13       BY MR. BENSON:

14           I'm not saying Attorney King told her to  
15          make this up at all.

16       BY THE COURT:

17           Well, then if you permit him to disclaim  
18          her, it shouldn't be changing anything then.

19       BY MR. BENSON:

20           Well, as to the conversation, our  
21          objection is on the record.

22       BY MR. KING:

23           Then we'll stipulate to that right here  
24          that the State is not making any contention  
25          that counsel for the defense suggested the

725

1256

VANES 001265

1 alibi or put this witness up to the alibi.  
2 Make that stipulation right now and have the  
3 Court read it to the jury.

4 BY MR. BENSON:

5 I'm not going to stipulate to that. I  
6 don't know what she inferred from your  
7 conversations, but you cannot inject yourself  
8 as a witness and you did that by bringing up  
9 the content.

10 BY THE COURT:

11 I'm telling him to do it without him  
12 injecting himself as a witness in the case.

13 BY MR. KING:

14 Fine.

15  
16 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
17 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

18  
19 BY MR. KING:

20 Q The prosecutor asked you about your and your  
21 family's visit to my office on the morning of  
22 March the 4th seeking legal help for your  
23 brother. Do you recall that question?

24 A Yes.

25 Q Now, at any point in that meeting, did I or

1 any other person by any description whatsoever  
2 tell you what you were doing on February 27th,  
3 1992?

4 A No.

5 Q Was there a discussion about what you were  
6 doing on February 27th, 1992?

7 A No, only we talked about fees and  
8 different kinds of --

9 BY THE COURT:

10 Well, if the answer is no, let's just cut  
11 it off at that point.

12 BY THE WITNESS:

13 Okay.

14 BY MR. KING:

15 Q So has anyone suggested to you to come up with  
16 some false story about car shopping on  
17 February 27th?

18 A No.

19 Q Now, the prosecutor asked you about not  
20 telling Detective Outlaw the night of the 3rd  
21 when you're down there, having learned your  
22 brother had been arrested, about where you  
23 were on February 27th, and you have indicated  
24 you didn't tell him until March 4th, 1992. Do  
25 you recall that?



1 A Yes.

2 Q Do you recall him asking you, "Didn't you  
3 think it would help your brother to tell the  
4 police on March 3rd, 1992 where you and Timmy  
5 and your fiance had been?" Do you recall that  
6 question to you?

7 A Yes.

8 Q When you did tell the police on March 4th,  
9 1992 when they were searching your home, has  
10 it done your brother, Timmy, one lick of good?

11 BY MR. BENSON:

12 Objection, Your Honor. That's  
13 calling for a conclusion on this  
14 witness's part.

15 BY MR. KING:

16 One she's more than capable of making.

17 BY THE COURT:

18 Well, as to whether or not it has done him  
19 any good, I would sustain the objection.  
20 We're still in trial here on the issues.

21 BY MR. KING:

22 Q To your knowledge, have the police ever, ever  
23 done anything to verify and check out what you  
24 told them on March 4th, 1992, to your  
25 knowledge?

1 A No.

2 Q Now, when you did tell Detective Outlaw on  
3 March 4th, 1992, the very day after your  
4 brother had been arrested, what you and he and  
5 your fiance were doing on the previous  
6 Thursday, were you sure of your recollection--

7 BY MR. BENSON:

8 Objection. Leading. Move to  
9 strike.

10 BY THE COURT:

11 Overruled. You may answer that.

12 BY THE WITNESS:

13 A Yes, I was sure.

14 BY MR. KING:

15 Q Were you confident when you told him on March  
16 4th that if they go and check it out, you  
17 would be proven right?

18 A Yes.

19 Q Would you try and do anything to hurt your  
20 brother.

21 BY MR. BENSON:

22 Objection, Your Honor. Self-  
23 serving statement by this  
24 witness.

25 BY MR. KING:

1 I don't know that that's a legal basis.

2 BY THE COURT:

3 "Would you do anything to try to hurt your  
4 brother?"

5 BY MR. KING:

6 Yes.

7 BY THE COURT:

8 You may ask that.

9 BY MR. KING:

10 Q Would you do anything to hurt your brother?

11 A No. I felt telling the truth would help  
12 him more.

13 Q From your point of view and your frame of mind  
14 when you're talking to Detective Outlaw on  
15 March 4th, would telling him that you were car  
16 shopping when he was accused of committing  
17 these acts and it later be found out that that  
18 wasn't so, would that hurt your brother if the  
19 police were to have gone out on March 4th and  
20 gone to these car dealers and found out that  
21 this never happened, this car trip never  
22 happened? Would that hurt your brother?

23 BY MR. BENSON:

24 Objection, Judge, it's a compound  
25 question and it's speculation on

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1261



1                                   this witness's part.

2       BY THE COURT:

3                   I would sustain it as hypothetical as  
4                   well.

5       BY MR. KING:

6       Q     On March 4th, 1992, did you tell Detective  
7             Outlaw what you told this jury here today?

8       BY MR. BENSON:

9                                   Objection. Asked and answered.

10      BY MR. KING:

11                   Well, we're on redirect. The prosecution  
12                   went into it on cross-exam.

13      BY THE COURT:

14                   One more time; you may ask.

15      BY MR. KING:

16      Q     Did you tell Detective Outlaw on March 4th,  
17             1992 what you told this jury here today?

18      A     Yes.

19      Q     Now, the prosecutor asked questions about in  
20             the seventeen-hour period between Timmy's  
21             arrest and the search of the house, about who  
22             was home, what people were doing. Do you  
23             recall that question?

24      A     Yes.

25      Q     And you were indicating for his benefit that



1 in addition to your sisters and in addition to  
2 your fiance and, of course, yourself, two  
3 nephews were in the house, is that correct?

4 A Yes.

5 Q How old are your nephews?

6 A One is four and one is ten.

7 Q Now, from the time you left that police  
8 station on March 3rd, 1992, and after your two  
9 discussions with Outlaw, up to and including  
10 the time they came and served the search  
11 warrant -- and I'm including in there your  
12 visit to my office -- did you have any hint  
13 from anybody as to what might have been taken  
14 in the robbery your brother was accused of?

15 A No.

16 Q Did you have any hint from anybody what  
17 clothing --

18 BY MR. BENSON:

19 Objection. Leading.

20 BY THE COURT:

21 I'm not seeing it as leading at this  
22 point. You may finish.

23 BY MR. KING:

24 Q Did you hear any clue from anybody as to what  
25 clothing the perpetrator of these crimes was

1 supposed to have been wearing?

2 A No.

3 Q Did you have any clue from anybody about any  
4 type of weapon, specific type of gun had been  
5 used?

6 A No.

7 Q Would you have had any basis whatsoever to  
8 know what the police might come and be looking  
9 for when they served the warrant?

10 A No.

11 BY MR. BENSON:

12 Objection, Judge. Move to  
13 strike.

14 BY THE COURT:

15 Overruled.

16 BY MR. KING:

17 Q Now, you have shared with us from December  
18 through February Willie's girlfriend, Chandra  
19 -- well, he had a girlfriend, in fact,  
20 correct?

21 A Yes.

22 Q And you said her nickname is Speedy, correct?

23 A Yes.

24 Q If you know, why is she nicknamed Speedy?

25 A She's a track star.

1 Q To your knowledge, even today, are they still  
2 boyfriend and girlfriend?

3 A Yes.

4 BY MR. KING:

5 That's all I have. Thank you.

6 RECROSS-EXAMINATION

7 BY

8 MR. BENSON

9 Q Now, you testified on direct that you had no  
10 discussion about the incidents on February  
11 27th when you went and talked to Attorney  
12 King, is that correct?

13 A I just discussed about my brother being  
14 accused of something he didn't do.

15 Q Well, when you were asked the question, you  
16 said, "All we talked about was the fees."  
17 Now, is that not an accurate answer?

18 BY THE COURT:

19 I believe I cut the answer off at that  
20 point because I wanted her simply to respond  
21 to the particular question she was asked about  
22 whether or not anything was suggested. The  
23 witness was about to go on, but I cut her off.

24 BY MR. BENSON:

25 Q It's your testimony then that you did talk



1 about other things?

2 A Yes.

3 Q Now, defense counsel asked you the question  
4 that you're not aware of anything the Gary  
5 Police Department did to try and verify the  
6 alibi of your brother, correct?

7 A Correct.

8 Q And you felt that telling them would have done  
9 no good, correct?

10 A Correct.

11 Q And you feel to this day nobody has done  
12 anything to verify that alibi to your brother?

13 A Correct.

14 Q Are you aware that this man sitting right here  
15 (indicating), Ron Fleming, went out and showed  
16 your brother's picture to all these car  
17 salesmen? Are you aware of that?

18 A Yes.

19 Q Then why are you saying that you feel no one  
20 has done anything to try and investigate the  
21 information you gave the Gary Police  
22 Department?

23 A I said it because Outlaw was the  
24 investigator.

25 Q Pardon?

735

1266

VANES 001275

1 A Outlaw was investigating the case; he  
2 didn't do anything.

3 Q No, but, ma'am, I just asked you a second ago  
4 that you feel that no one has done anything to  
5 investigate this case.

6 A As far as the investigation is Outlaw and  
7 the Gary police; I wasn't talking about  
8 this investigator.

9 Q So you're not aware that this individual right  
10 here (indicating) went out and showed your  
11 brother's picture to those car dealers that  
12 you gave -- those names you gave to Bruce  
13 Outlaw?

14 A I'm aware an investigator went out, yes.

15 Q Are you aware an investigator from the  
16 prosecutorial side of this case went out, not  
17 from the defense side?

18 A No, I -- I'm not sure who went out; I just  
19 know someone went out.

20 Q Well, then, ma'am, if you don't know who's  
21 doing what, how can you sit up there and make  
22 a blanket statement that you don't feel anyone  
23 has investigated the allegations of an alibi  
24 that you made? What do you possibly base that  
25 on?

1 A Because I felt it would have -- I told him  
2 that right then and there; there should  
3 have been some kind of results what I told  
4 him.

5 Q Ma'am, you testified on redirect that as of  
6 right this moment, you don't feel anyone has  
7 done anything to attempt to verify your story,  
8 isn't that what you said?

9 BY MR. KING:

10 I'm going to object. Counsel is  
11 misrepresenting; that was in  
12 response to a question he just  
13 posed on recross. That is not  
14 what was said on redirect.

15 BY THE COURT:

16 Yes, recross.

17 BY MR. BENSON:

18 I believe I was reiterating what was said  
19 on redirect, Your Honor.

20 BY THE COURT:

21 I think he was referring to the Gary  
22 police in his questioning, but on recross you  
23 said "anyone."

24 BY MR. BENSON:

25 Q So as of this moment, you feel no one has done



1 anything to attempt to verify the alibi of  
2 your brother, is that correct?

3 A As far as the Gary police.

4 Q So you're unaware of anything else that has  
5 been done to attempt to verify the facts which  
6 you gave to Detective Outlaw?

7 A I know one other investigator; I was told  
8 an investigator has been out there.

9 Q But you don't know whether that was an  
10 investigator from Scott King's office or this  
11 gentleman sitting right here at the  
12 prosecutor's table?

13 A From Scott King' office.

14 Q And you're unaware whether or not this man  
15 right here (indicating), Ron Fleming, ever  
16 went out and talked to the car dealership?

17 A No, I'm not.

18 Q And that would be new knowledge to you if I  
19 told you that that man did go out and show  
20 your brother's pictures to those car dealers?

21 A Correct.

22 Q And you testified that you met with Attorney  
23 King. What day was that on?

24 A On the 4th.

25 Q The 4th of March, right?

1 A Yes.

2 Q And that you knew nothing about these  
3 incidents, correct, these robberies which had  
4 occurred on February 27th of which your  
5 brother was accused?

6 A No.

7 Q Isn't it true that an article was published in  
8 the Post Tribune on February 29th before you  
9 met with him?

10 A Yes.

11 Q Isn't it true, ma'am, that you were car  
12 shopping an awful lot that month and you are  
13 mistaken as to what day you went --

14 A No.

15 Q Are you going to answer already or are you  
16 going to let me finish the question?

17 A I'm sorry.

18 Q -- as to what day you went to the car  
19 dealerships?

20 A No, I'm not mistaken.

21 Q You're not at all?

22 A No.

23 Q At a prior hearing, you testified that you  
24 were shopping "constantly," that is your word,  
25 and yet you're telling the ladies and



1 gentlemen of the jury that you can still  
2 distinguish that day from any other day?

3 A Yes.

4 BY MR. BENSON:

5 Nothing further. Thank you very much.

6 RE REDIRECT EXAMINATION

7 BY

8 MR. KING

9 Q The prosecutor is representing to you about  
10 their investigator going out and checking this  
11 out. Have you been informed the first time  
12 they did that was approximately two weeks ago?

13 BY MR. BENSON:

14 Objection. Relevancy, Judge.

15 BY THE COURT:

16 Well, I think the State did raise this  
17 issue.

18 BY MR. KING:

19 Yes, they did, Your Honor, and I'm just  
20 trying to complete some factors relevant to  
21 it.

22 Q Were you told that that was the first time,  
23 two weeks ago?

24 A Yes.

25 Q And do you recall that you personally, under

740

1271

1 oath, the same oath you took today, told that  
2 man there (indicating) what you're telling the  
3 jury here today April 6th, 1992? Do you  
4 remember telling him that in that previous  
5 hearing?

6 A Yes.

7 BY MR. KING:

8 That's all I have.

9 BY MR. BENSON:

10 No recross, Your Honor.

11 BY THE COURT:

12 You may step down, ma'am. I think you may  
13 remain in court unless there's a  
14 representation she would be recalled.

15 BY MR. BENSON:

16 Yes, Your Honor, the State may.

BY THE COURT:

Until we have time to talk about that,  
please remain outside the courtroom.

BY MR. KING:

Mr. Hopkins, Dan Hopkins.

DAN HOPKINS,  
having been first duly sworn upon his oath,  
testifies as follows:

clerk's office

741

MAY 23 1997

1272

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

DIRECT EXAMINATION

BY

MR. KING

BY MR. KING:

Q Would you state your name and spell your last name for the court reporter, please?

A Dan B. Hopkins, H-o-p-k-i-n-s.

Q Mr. Hopkins, how old are you, sir?

A Thirty-one.

Q Where do you live, sir?

A 3866 Connecticut Street.

Q And how long have you been living at that address?

A Approximately three years.

Q And with whom do you live at that address?

A Well, my fiance, which name is Sheila Donald, and her two sister and her brother and her sister' two kids.

Q And by brother, do you recognize the person over here at this table?

A Willie Donald, which I call Timmy, yes, I do.

Q And how long have you lived there?

A Three years.

Q Are you employed?

742

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1 A Yes, sir, I am.

2 Q Where do you work at?

3 A I work at Phar-Mor, which is located on  
4 Halstead, Homewood, Illinois.

5 Q And how long have you worked for Phar-Mor?

6 A Approximately three years.

7 Q What's your job description there at the Phar-  
8 Mor Drug Store?

9 A I'm assistant store manager, which mean I  
10 take care of the entire store.

11 Q And how long have you had that position with  
12 Phar-Mor

13 A Originally, I started out as a warehouse  
14 manager; I was a warehouse manager for two  
15 months, so it would be close to two years  
16 -- almost three years in that position.

17 Q Now, did there come a time in early March of  
18 1992 when you learned that Sheila's brother,  
19 Timmy, had been arrested by officers of the  
20 Gary Police Department?

21 A Yes.

22 Q And did there come a time when you learned  
23 what day he was accused of having committed  
24 the crimes?

25 A It was on the 3rd.

1 Q The 3rd is what, the day he was arrested?

2 A I learned on the 3rd, the day he was  
3 arrested, yes.

4 Q And did there come a time when you learned  
5 that the accusation was based on the acts of  
6 the previous Thursday?

7 A Yes, sir.

8 Q Now, did you have occasion to recall what, if  
9 anything, you were doing the Thursday before  
10 March the 3rd?

11 A Well, when they arrested Timmy, I was not  
12 there; on my arrival home from work on  
13 that evening, my fiance said, "I'm going  
14 to the police station," I said, "Why?" she  
15 said, "My brother had been arrested," and  
16 I said, "Why?" Her little sister then  
17 said that they got him on a bench warrant,  
so I said, "Well, by the time you get  
there, he should be out." She then called  
me back later on that night, and they  
21 didn't get really no true feed back. The  
22 following day, there still wasn't any  
23 charge, so they really didn't know  
24 anything at this point. So the following  
25 day at about noon, I was preparing to get

1 dressed for work, and I believe Officer  
2 Outlaw came to the house with a search  
3 warrant, and he told me he had a search  
4 warrant to search the house. So I asked  
5 to read the search warrant, which I did.

6 Q Let me interrupt for a moment. I'm going to  
7 show you what's been admitted into evidence as  
8 Defendant's Exhibit 2. Do you recognize that  
9 as the search warrant that you read when the  
10 policemen came?

11 A Yes.

12 Q Now, did the policemen search the house?

13 A Yes, sir.

14 Q Did you observe anybody else or did you  
15 yourself try and stop them from doing that?

16 A No, I did not try to stop them. I  
17 questioned them, but the fact was, "Why  
18 did he need to search a house for a man  
19 locked up just for a traffic ticket?" and  
20 after I read this as stated the date at  
21 the top, and whatever the problem was on  
22 the 27th, I recall on the 27th that Timmy  
23 was with me car shopping. So once he told  
24 me the date, I said, "Proceed to search  
25 the house, because that day, whatever



1 happened at a certain time on here, it  
2 could not be. He was with us." So I  
3 proceeded to continue on to get dressed.

4 Q What do you remember about you and Timmy on  
5 the 27th?

6 A On the 27th, I arrived home at 4:30 that  
7 evening. I had planned to take Sheila, my  
8 fiance, car shopping. Sheila arrived home  
9 at about 5:30, she talked to her sister,  
10 Sharon, in the bedroom, I came up front  
11 and asked her was she ready to go. So we  
12 stayed in the house approximately about  
13 fifteen minutes. So a quarter till, we  
14 head out the door; as we was going out the  
15 door, Timmy was coming in the door. He  
16 asked his sister where was she going, and  
17 she said car shopping; he asked could he  
18 come along, she said, "Sure."

19 Q Now, have you had occasion -- and we'll  
20 continue in a minute -- but have you had  
21 occasion prior to today to testify to these  
22 facts by way of a deposition where you were  
23 questioned by this gentleman here  
24 (indicating)?

25 A Yes, sir, I was.

1 Q About how long ago was that?

2 A Three days.

3 Q Now, do you remember the name of the car  
4 dealership that and Timmy and his sister went  
5 to?

6 A Yes, I do. The first stop was at Paul  
7 Sur.

8 Q Do you have any recollection, sir, as to what  
9 time you would have arrived over at Paul Sur  
10 Pontiac?

11 A Yes, I do. I took Ridge Road to I65, I  
12 took I65 to 61st Avenue, I then took a  
13 left off 61st Avenue and arrived at Paul  
14 Sur, so it was like 6:15 at that time.

15 Q And what did you guys do when you got there?

16 A I parked the car, Sheila and Timmy  
17 proceeded to go to the show room. I  
18 noticed they had a hot rod in the used  
19 parking lot, so I took a quick peek at  
20 that and I rejoined them in the show room.

21 Q What sort of -- what was prompting the car  
22 shopping? Who wanted a car?

23 A We were shopping for Sheila.

24 Q Did you have occasion to talk to any car  
25 salesmen there?

747

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1 A Well, first we got there, it was really  
 2 busy at the time, so we got a chance to  
 3 tour the whole show room, meaning that we  
 4 got a chance to look at all the show room  
 5 cars that was there and got to look  
 6 inside. And we was arrived back to the  
 7 doorway -- they had a chart posted on the  
 8 wall saying about an auto show you can  
 9 enter, an auto show, free ticket, so I was  
 10 reading over that. At this time a  
 11 salesman approached us and asked us if he  
 12 could do us any service.

13 Q What do you remember about this salesman in  
 14 terms of description?

15 A The salesman, he was Caucasian,  
 16 approximately five ten to five eleven, he  
 17 wore glasses, mustache, his hair was -- he  
 18 got kind of like a bald spot here  
 19 (indicating), kind of gray, and he combed  
 20 it to the back.

21 Q Now, was there any particular model or make of  
 22 car to your knowledge that Sheila was  
 23 interested in looking at and finding out  
 24 about?

25 A Yes, it was a Grand Am and Grand Prix she

1 heard about on the commercial, so we want  
2 to go to the Pontiac place because they  
3 sell the Grand Am and the Grand Prix.

4 Q Did you get some pricing information from the  
5 salesman?

6 A As he came up and approached, he asked how  
7 could he serve us. We told him we was  
8 interested in the Grand Prix and the Grand  
9 Am, and he told us the special he had  
10 running, and he talked about two point  
11 nine (2.9) and four point nine (4.9) and  
12 six point nine (6.9) and eight point nine  
13 (8.9).

14 Q Now, who was present during this conversation?

15 A It was Timmy, Sheila and myself and the  
16 car salesman.

17 Q Now, did there come a time at Paul Sur Pontiac  
18 where you had a conversation with anybody  
19 working there other than the salesman?

20 A Yes. When we was done talking to the  
21 salesman, the guy came out the auto shop.  
22 I needed an engine for my car or it needed  
23 to be rebuilt so I asked him how much to  
24 rebuild my engine or how much it would  
25 cost me for a new engine, and he gave me a

1 rough estimate of how much it would cost.

2 Q Do you recall, first of all, what estimate he  
3 gave you?

4 A For a rebuild -- he said for that type of  
5 motor, it would be best if you just bought  
6 a new one, and he said about twenty-six  
7 hundred would take care of it.

8 Q Did he give you any other figures about the  
9 engine?

10 A He did not.

11 Q Did he give you anything in writing about the  
12 engine?

13 A The salesman gave me a card with the six  
14 point nine (6.9); he wrote up a card  
15 stating the amount the car payment would  
16 be and the kind of sale that was running  
17 if we took a certain deal, so the car  
18 salesman that was serving us, he did give  
19 us a card.

20 Q All right, did you get anything on the price  
21 of the engine for your car, if you can recall?

22 A No, sir, I didn't.

23 Q I'm going to hand you what's been marked for  
24 identification previously as Defendant's  
25 Exhibit Number 6. Would you take just a



1 second and look at those three -- two cards  
2 and a little piece of paper on both sides?  
3 And I'm going to ask you then if your memory  
4 is refreshed as to whether you had any sort of  
5 written estimate on the engine?

6 A Okay.

7 Q Is your memory refreshed as to whether you  
8 were given anything in writing about the  
9 engine cost?

10 A Twenty-six hundred, yes.

11 Q These documents I've handed you, have you seen  
12 them before, any of them?

13 A Yes, sir.

14 Q And when did you first see these?

15 A I first saw those after leaving the car  
16 lot, as we were leaving.

17 Q On the night you told us about, are those the  
18 papers you were given?

A Yes, sir.

Q Now, did there come a time when you left Paul  
21 Sur Pontiac and went somewhere else?

22 A Yes. After receiving the card from the  
23 salesman, I felt that it wasn't the best  
24 deal I can get, so I shook his hand and I  
25 told him I'd shop around a bit, and if I



1 don't find a better deal, I'll get back  
2 with him. We then proceed to leave,  
3 Sheila, Timmy and myself, we got into the  
4 car, took Broadway to US 30, US 30 to Main  
5 Street and down to Bob Anderson.

6 Q And that's another Pontiac dealer?

7 A And that's another Pontiac dealer, yes,  
8 sir.

9 Q Now, do you have any recall as you sit here  
10 today as to approximately what time you  
11 arrived at Bob Anderson Pontiac?

12 A We get out the car, and because Sheila is  
13 a very slow shopper, so we looked around  
14 for a little while, and I asked about the  
15 time. So she said it was like 8:00  
16 o'clock.

17 Q Now, once you got to Bob Anderson, can you  
18 tell us what you recall happening there?

19 A There was two Sunbird in the parking lot,  
20 both '92; we looked at the '92 Sunbird and  
21 one had a sun roof and one did not. We  
22 then proceed to walk towards the door  
23 where there was a van sitting out. We  
24 started looking at the van and walked  
25 around the van -- I thought it was a very

1 nice van -- but Sheila really wanted a  
2 car, but I said a van would be more  
3 basically what we really needed because  
4 they have a large family. But she really  
5 wanted a car, so I tried to persuade her  
6 into talking about the van, so it took me  
7 a little while at that, and at this point,  
8 a salesman came up.

9 Q Now, did there come a time when you and Sheila  
10 and Timmy test drove any vehicle?

11 A Yes.

12 Q What vehicle was test driven?

13 A We test drove the van and the '92 Sunbird.

14 Q Which one did you test drive first, if you can  
15 recall?

16 A The van.

17 Q And who did the driving?

18 A Sheila.

19 Q Who all went on the ride on the test drive?

20 A Sheila, Timmy and myself.

21 Q Now, after the test drive of the van, what  
22 happened next?

23 A After we test drove the van, came back to  
24 the parking lot, parked the van on the  
25 light, got a very good look at the van,

1 but yet still Sheila really didn't want  
2 the van. So then we asked the salesman --  
3 we started to look at the Sunbird, we  
4 asked could we test drive the Sunbird, the  
5 one with the sun roof; he said, "Sure."

6 Q Did you do so?

7 A Yes, sir, we did.

8 Q And who all went on that test drive?

9 A Me, Sheila and Timmy.

10 Q Who drove?

11 A Sheila drove down to, I believe the street  
12 is 93rd, went down about six blocks, and  
13 then I drove it back.

14 Q When you got back to the dealership, what is  
15 the next thing you recall happening?

16 A We went inside, the sales manager said did  
17 we like the car, we said, "Yes." I  
18 started to talk to the salesman, Timmy and  
19 Sheila started looking around the show  
20 room. So as I was talking to the salesman  
21 about the van and about the Sunbird,  
22 Sheila started questioning -- he walked  
23 over, she still liked the Grand Am, and  
24 she proceed to ask him about the Grand Am  
25 and the Grand Prix. And I told him we was



at Paul Sur and I told him about the deal, and he also told about the special that he had on there, which basically was the same but he could work on the price. So I sit down with him and I said, "If I could buy the car tonight, what kind of deal could you give us?" He sat down and drew up a card to the amount the car would be if we took it tonight.

Q What happened next after you go through this pricing thing?

A Well, we sit there, and my knowledge, it was getting late, so Sheila was still unsure, and I kind of like said, "Make your mind up, they'll be closing," and the salesman say, "No, you're inside the place. As long as you're here, we'll take care of you," which he did.

Q Do you have any recall of the time we're talking about here after the test drives and after you're talking pricing and what have you?

A I would say roughly maybe an hour and a half.

Q In terms of how long you had been there?

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1 A Yeah.

2 Q Now, how long after that did you leave Bob  
3 Anderson?

4 A After he writ (sic) up the car to us, we  
5 basically proceed to walk out and then we  
6 left.

7 Q And where did you go from there?

8 A I took Main Street back to US 30, US 30  
9 back to Broadway, down Broadway to 41st  
10 Avenue; at the E-Z Go gas station, I  
11 stopped and purchased some gas.

12 Q Where did you go from there?

13 A Home.

14 Q Now, when you got to the house, you're still  
15 with Timmy and your fiance?

16 A Timmy and Sheila, yes, sir.

17 Q And what do you all do when you get to the  
18 house?

19 A Well, I get to the house, began to unwind.  
20 I had to write the work schedule, so --

21 Q What do you mean the work schedule? Real  
22 quick, what's that?

23 A It's my stockers' schedule that I had to  
24 write.

25 Q Your what schedule?

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1 A Stockers, the employee, I call them  
2 stocker; so I had to write their schedule  
3 for work.

4 Q Who was going to work what day, what hours?

5 A Right, yes.

6 Q Now, in this period -- where are you doing  
7 that work at, the stocking schedule?

8 A I started to do the schedule in the  
9 bedroom and the phone rang.

10 Q Now, where was Sheila at this time?

11 A Sheila had turned in already.

12 Q What about Timmy or Willie?

13 A Timmy -- Willie, when we got home, he kind  
14 of like really turn in; he said he was  
15 very tired, he laid down.

16 Q From the time you left the house to go car  
17 shopping until the time you got back home from  
18 car shopping, was Willie or Timmy ever away  
19 from you, ever away from your presence?

20 A No.

21 Q Do you have any recall -- if you don't that's  
22 fine -- but do you have any recall as to what  
23 time you and Timmy and Sheila walked in the  
24 door of your house getting back from car  
25 shopping?

1 A I would have to say approximately either  
2 10:00 or just before 10:00, in that area.

3 Q Okay, why do you say that?

4 A Why do I say just before 10:00?

5 Q Yeah, I mean are you estimating the time, did  
6 you look at a watch? How do you come up with  
7 the time?

8 A Well, I'm estimating the time I walked in;  
9 it was kind of late. It was after 9:00;  
10 it could have been before 10:00, it could  
11 have been after 10:00 but no later than  
12 that.

13 Q And you had been living in this household for  
14 how long a period of time as of March of 1992?

15 A Approximately three years.

16 Q When you do your stocking schedules, are those  
17 times to a particular date? You know what I  
18 mean, do they have the dates on the schedule?

19 A Yes.

20 Q Is that something you do on a weekly basis?

21 A Yes.

22 Q Now, one last question: On this car shopping  
23 trip, are you sure it was Thursday, February  
24 27th as opposed to some other Thursday?

25 A Yes, sir, I do -- I'm sure.



1 BY MR. KING:

2 I'll pass the witness.

3 CROSS-EXAMINATION

4 BY

5 MR. BENSON

6 Q Now, you testified that when you came home  
7 after going car shopping on the 27th that you  
8 went to your bedroom to fill out the schedule  
9 and Sheila turned in, correct?

10 A Yes, sir.

11 Q Now, were you in the same room with her as you  
12 were doing the schedule or was she in a  
13 different room?

14 A Same.

15 Q Same room. When you were in that room, then  
16 you heard the phone ring, correct?

17 A The phone is in the bedroom also, yes.

18 Q Correct me if I'm wrong, but you're in your  
bedroom and you're working on your schedule  
and Sheila is in bed trying to fall to sleep,  
right, and the phone is in there and it rings,  
right?

22 A Correct.

23 Q And what do you do when you hear the phone  
24 ring?  
25



1 A Answer it.

2 Q And who was the call for?

3 A Timmy.

4 Q And what did you do?

5 A Asked who was calling, first of all, and  
6 the person said, "Speedy."

7 Q And you know Speedy as who?

8 A Speedy.

9 Q In what relation to the defendant?

10 A Someone he's dating.

11 Q And what did you do?

12 A I goes up front to Timmy, "You have a  
13 phone call," he say, "Dan, I'm very tired.  
14 I really don't feel like talking." I goes  
15 back to the phone, say, "Speedy, he turned  
16 in."

17 Q And the defendant never did talk to Speedy  
18 that night, or did he?

19 A Between the time I walked to the bedroom  
20 and by the time I hung the phone up, I  
21 didn't really -- when I said that, he  
22 could have picked it up 'cause he knew it  
23 was her, but to my recollection, I just  
24 hung the phone up. Whether he picked it  
25 up or not, possibility.

1 Q Do you have another phone in the living room?

2 A Yes, sir.

3 Q And where is the bedroom in relation to the  
4 living room?

5 A My bedroom is in the back.

6 Q It's in the back?

7 A Yes.

8 Q So you can't see the living room, right --

9 A Right.

10 Q -- from your bedroom?

11 A Right.

12 Q So if Sheila were to testify that she saw the  
13 defendant talking on the phone, that would be  
14 impossible, wouldn't it?

15 BY MR. KING:

16 Objection. Once again, that  
17 is argumentative, comparing  
18 testimony between witnesses.

19 BY THE COURT:

20 Sustained.

21 BY MR. BENSON:

22 Q Based upon your observation, would she have  
23 seen the defendant talk on the phone?

24 A Based on my observation, it all depends on  
25 what time he was talking. Was it talking

1 about the time that I answered the phone  
2 or was it before I answered the phone?  
3 What time are we talking about, after the  
4 fact that I answered the phone or before?  
5 Q Well, let's back up a second. You were in the  
6 room with Sheila, correct?  
7 A Yes.  
8 Q The phone rings, you answer it, correct?  
9 A Correct.  
10 Q You get up and you go to the defendant, right?  
11 A Correct.  
12 Q Sheila's still in the room, right?  
13 A Correct.  
14 Q You talk with the defendant and tell him who  
15 it is and he says, "I don't want to talk,"  
16 correct?  
17 A Correct.  
18 Q You come back to the room, right, the bedroom?  
19 A Uh-huh.  
20 Q Sheila was still in the room, right?  
21 A Correct.  
22 Q And you tell Speedy that, "He doesn't want to  
23 talk to you. He's sleeping"?  
24 A Correct.  
25 Q On that scenario, based upon what you



1 observed, how is it possible she could have  
2 seen the defendant talking on the phone?

3 A Right.

4 Q It would have been impossible, correct?

5 A At that time, yes.

6 Q Well, what other time are you talking about?

7 A She could have seen him after, she could  
8 have seen him before.

9 Q Well, weren't you in the bedroom with her?

10 A Yes.

11 Q So how could she have seen him? You just said  
12 you can't see from the bedroom to the living  
13 room.

14 A Okay, we have what we call a three-way  
15 phone call, a hold call, so the phone that  
16 rang -- let's say that I answer the phone  
17 that rang -- if someone else is on the  
phone, I would not hear the phone. Sheila  
could have went to the bathroom and saw  
him on the phone, but this phone call, she  
did not see him on the phone, correct.

21  
22 Q Well, was there more than one phone call that  
23 evening after 10:30?

24 A Okay, I stated that I got a phone call,  
25 meaning if someone is on the phone, you



1 cannot hear the phone ring, so possibly if  
2 somebody called, someone else could answer  
3 it because they were already on the phone  
4 and I would not hear it ring.

5 Q Now, was Speedy's call what you call a hold  
6 call where you were talking already on the  
7 phone?

8 A Speedy's call was not a hold call.

9 Q Okay, so Speedy calls, and you're in the  
10 bedroom with your fiance, right?

11 A Correct.

12 Q And you cannot see the living room from your  
13 bedroom, correct?

14 A Correct.

15 Q And you go into the living room and tell the  
16 defendant that it's Speedy, he says, "I'm  
17 sleepy; I don't want to talk," correct?

18 A He said, "I'm tired; I'm trying to sleep,"  
19 correct.

20 Q And you come back into the bedroom and Sheila  
21 is still in the bedroom, right?

22 A Yes.

23 Q Did she look like she had left?

24 A No.

25 Q Was she still under the blanket

764

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*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

1295

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1 A Just in the bedroom.

2 Q I mean she wasn't up walking about the room,  
3 correct?

4 A Correct.

5 Q And you tell Speedy, "He doesn't want to talk.  
6 He's sleeping," and you hang up, right?

7 A Correct.

8 Q Did you ever see Sheila leave the room when  
9 you were walking over to the defendant?

10 A No.

11 Q So from what you observed, it would be  
12 impossible for her to observe the defendant  
13 talking on the phone, correct?

14 A Correct.

15 Q Based upon what you saw, if she said she did  
16 see the defendant talking on the phone that  
17 evening, that would be inaccurate, wouldn't  
18 it?

19 A At the time, I said 10:00, probably 10:00  
20 when I got home, if she's talking another  
21 time, correct (sic).

22 Q Well, did you hear the phone ring any other  
23 time that night before you went to sleep?

24 A No.

25 Q So that had to be the only phone call, right?

1 A Wrong. I have a waiting-call system; if  
2 somebody has picked the phone up, if they  
3 call out, someone can call out, if the  
4 phone rang while you're on the phone, I  
5 cannot hear it.

6 Q Okay, well, let's back up then. You were in  
7 the room making out your schedule, right?

8 A Correct.

9 Q And you were in there when Speedy called,  
10 right?

11 A Correct.

12 Q And the defendant was sleeping, you tell  
13 Speedy, "He's sleeping," you hang up the  
14 phone, right?

15 A "Trying to sleep," correct.

16 Q And you went back to making your schedule out  
17 then, correct?

18 A Correct.

19 Q Did you ever see Sheila leave the bedroom at  
all until you went to sleep?

A She left.

22 Q Where did she go?

23 A The bathroom, to see how her sister done.

24 Q Well, wasn't she sleeping?

25 A She wasn't sleeping, she turned in, not



1 meaning you sleep. The t.v. is there  
2 also.

3 Q Okay. So she "turned in" but she didn't go to  
4 sleep, is that what you're saying?

5 A Correct.

6 Q Did she ever leave the room?

7 A Yes.

8 Q How many times?

9 A Approximately -- maybe two.

10 Q Pardon?

11 A Maybe two.

12 Q Isn't it true that that was the only time that  
13 Speedy called the residence that night that  
14 you're aware of?

15 A Yes.

16 Q And that is the only call that was received at  
17 that residence that night that you heard?

18 A That I heard, yes.

19 Q What day did you testify you first became  
20 aware of the fact the defendant was arrested?

21 A The next day.

22 Q The next day. What day would that have been?

23 A The day after I testified that he got  
24 arrested.

25 Q Now, I'm asking you what day did you become



1           aware of the fact the defendant had been  
2           arrested?

3           A           He got arrested the same -- on the 3rd, I  
4                       was aware of it when I got home from work.

5           Q           Okay, and what day of the week was that?

6           A           Tuesday.

7           Q           You were aware on Tuesday, the 3rd. And did  
8                       you go down to the police station also with  
9                       Sheila?

10          A           No.

11          Q           That night they went?

12          A           Yes.

13          Q           Had they left before you had gotten home?

14          A           They was leaving out the door when I  
15                       arrived.

16          Q           Were you there when they came back?

17          A           They came back very late.

          Q           My question was: Were you there?

          A           Yes.

          Q           Did they talk to you?

          A           Yes.

22          Q           This was March 3rd, right?

23          A           Right.

24          Q           They came back from the police station on  
25                       March 3rd. And you said they talked to you

1 about what happened, right, that he had been  
2 arrested?

3 A He had been arrested.

4 Q And you testified on direct exam the first  
5 time that you knew what this was all about was  
6 when the search warrant was delivered to the  
7 residence, correct?

8 A Correct.

9 Q You didn't know anything about it. And that's  
10 when you recognized the date as the 27th as  
11 the day you went out car shopping, right?

12 A Right.

13 Q That's what you testified to.

14 A I said -- I testified to he went down to  
15 the police station for a traffic ticket --

16 Q Uh-huh.

17 A -- and nothing had been charged.

18 Q That's correct.

A Okay.

Q I don't want to misquote you. And that was  
approximately what time?

22 A What time? What are we talking about?

23 Q That would have been on March 3rd, right?

24 A Yes.

25 Q Approximately what time did you become aware

1 of the arrest of the defendant?

2 A I stated when I got home from work.

3 Q Approximately.

4 A 7:00.

5 Q At 7:00 o'clock, you become aware that the  
6 defendant had been arrested, correct?

7 A Correct.

8 Q And you also became aware that Sheila and some  
9 of the other family members had went down to  
10 the police station, correct?

11 A Correct.

12 Q And they came back late, correct?

13 A Correct.

14 Q Approximately what time?

15 A Maybe after 10:00.

16 Q That's on 3-3, correct?

17 A Correct.

18 Q That's Tuesday, right?

A Correct.

Q And then you testified that on the next day  
when the warrant came to your house --

22 A Correct.

23 Q -- that would have been approximately what  
24 time?

25 A Noon.

770

1301



1 Q That's when the warrant was served, 12:00 noon  
2 on March 4th, right, and you were there?

3 A Yes.

4 Q Let's back up to the 3rd at 10:00 o'clock when  
5 Sheila and them came home. Were you awake?

6 A Right.

7 Q Did you have any conversation with them?

8 A Very little.

9 Q Very little. Oh, come on, now. Her brother  
10 was just charged with murder and you didn't  
11 have any conversation?

12 A Okay, let's back up.

13 BY MR. KING:

14 Objection. He answered he had  
15 conversation, very little.

16 BY THE COURT:

17 Well, is there an objection to this  
question?

BY MR. KING:

21 Yes, it's mis-stating the previous  
22 response of the witness. He said, "You're  
23 saying she got home and you didn't have any  
24 conversation?"

24 BY MR. BENSON:

25 I'll rephrase that.

771

1302



1 BY THE COURT:

2 All right, let's start over.

3 BY MR. BENSON:

4 Q Did you question her about what was going on  
5 at the police station?

6 A I testified that when I got home --

7 Q I'm not asking you what you testified, I'm  
8 asking you what happened.

9 A Okay, what happened was when I got home on  
10 this day -- the 3rd you're talking about?

11 Q Yes, that evening. You came home from work,  
12 correct?

13 A Her brother had been arrested but no  
14 charges.

15 Q No charges?

16 A No charges.

Q She didn't tell you -- she told there were no  
charges?

A She didn't know.

20 Q She didn't know?

21 A He's going to the police station because  
22 of an outstanding ticket.

23 Q This is at 10:00 o'clock at night, right?

24 A Correct.

25 Q So if she testified that she had a

1 conversation with Bruce Outlaw and that  
2 Detective Outlaw told --

3 BY MR. KING:

4 Objection. Argumentative. Again,  
5 he's trying to compare the  
6 testimony of two witnesses.

7 BY THE COURT:

8 Sustained.

9 BY MR. BENSON:

10 Q She didn't tell you anything -- that her  
11 brother had been identified in a line-up for  
12 murder?

13 A Not that night, no.

14 Q She didn't tell you that night?

15 A No.

16 Q And it's your testimony that -- would you  
17 please turn around and look at the chart, sir?  
On Wednesday, March 4th at 12:00 noon, or  
approximately then, and you received a warrant  
and that date up there of the crime of 2-27,  
and that triggered in your mind that, "Hey, we  
were car shopping," correct?

22 A Exactly.

23 Q But when Sheila came home the night before,  
24 you never talked to her about the fact that  
25

1           you had been car shopping on the 27th?

2           A           Correct.

3           Q           She never mentioned that?

4           A           Correct.

5           Q           Did she tell you that she was at the police  
6                       station, and that as she was driving home from  
7                       the police station that night that her brother  
8                       was charged with a crime that occurred the  
9                       27th and that you were car shopping?

10          BY MR. KING:

11                               Objection. The charges in this  
12                               case were not filed until March  
13                               the 5th, 1992, as counsel is well  
14                               aware.

15          BY MR. BENSON:

16                       I'll rephrase that question then.

17          Q           Did Sheila tell you when she got home on March  
22                       3rd at 10:00 o'clock that she had been at the  
23                       police station and that Detective Outlaw had  
24                       told her that her brother was in a line-up and  
25                       identified for murder, and that driving home,  
                     she remembered that on the day that this crime  
                     occurred, you were car shopping?

24          A           No.

25          Q           She didn't tell you that night?



1 A No.

2 Q It's your testimony that the first time you  
3 ever equated the date of this incident with  
4 the fact that you were car shopping was when  
5 the warrant was served, correct?

6 A Correct.

7 Q And Sheila never said anything to you when she  
8 got home on the 3rd?

9 A To the best of my knowledge, he was  
10 arrested for an outstanding ticket. That  
11 didn't really concern me, so, no.

12 Q I'm not asking you about what he was arrested  
13 for, I'm asking you about a conversation you  
14 would have had with your fiance, the person  
15 you were going to marry, about the arrest and  
16 the charges, that he had been identified?

17 A I stated a ticket; it didn't really  
concern me, I really didn't get involved  
what it was based on at this time.

21 Q So that evening of the 3rd, you were totally  
22 unaware the defendant had been picked out of a  
line-up by two individuals for murder?

23 A Correct.

24 Q Do you think that's something Sheila would  
25 have told you if she had known it?

1 BY MR. KING:

2 Objection. This witness is not  
3 competent to testify to that.

4 BY THE COURT:

5 Sustained.

6 BY MR. BENSON:

7 Q How many people from the residence where you  
8 reside at went down to the police station on  
9 the 3rd that you're aware of?

10 A Two.

11 Q Two. Who was that?

12 A Sheila and her sister.

13 Q Did Sheila's sister tell you anything about  
14 what happened at the police station the night  
15 of the 3rd?

16 A They really didn't know anything.

17 Q They both told you they didn't know anything?

18 A When they came back, I was in the bedroom.  
19 I was really unconcerned because I felt it  
20 was just a ticket.

21 Q I'm not asking you -- maybe you misunderstand  
22 my question. I apologize for not being more  
23 articulate. I understand that your concern  
24 was that you thought it was a ticket, but I'm  
25 asking you what Sheila told you about what

1 transpired at the police station. And am I  
2 correct that it's your testimony that she  
3 really didn't say anything?

4 A Correct.

5 Q Going back to February 27th, the day of this  
6 car shopping, what time did you get home from  
7 work that day?

8 A Car shopping?

9 Q Yes.

10 A I was off that day.

11 Q Off. Did you ever talk to Speedy that day,  
12 the defendant's girlfriend?

13 A No.

14 Q Do you ever remember seeing the defendant talk  
15 with her on the phone?

16 A That day?

17 Q Yes.

18 A No.

19 Q So you thought the arrest was for a traffic  
20 offense?

21 A Correct.

22 Q Didn't you find it unusual when Sheila came  
23 home that they kept him overnight?

24 A Yes.

25 Q Did you make any inquiry to Sheila about that?



1 A I believe she said they had to keep him  
2 seventy-two hours after the arrest,  
3 something in that line.

4 Q She told you that?

5 A Yes.

6 Q She didn't tell you he had been picked out of  
7 a line-up for murder?

8 A No.

9 Q She didn't tell you she talked to Bruce  
10 Outlaw?

11 A No, sir.

12 Q During the course of February, how many times  
13 did you go out car shopping that month?

14 A Actually, the first day we went out, we  
15 went out the week before that to  
16 Indianapolis Boulevard, but everything was  
17 closed so we didn't really shop, we was  
18 getting some idea.

19 Q Was that the week before that you went out and  
20 all the places were closed?

21 A It could have been two weeks before, but  
22 it was before.

23 Q Was it, in fact, the Tuesday of that week, the  
24 27th that you went out and the places were  
25 closed?

1 A I'm not sure.

2 Q You're not sure what day you went out before,  
3 correct?

4 A Correct.

5 Q How many times would you estimate that you  
6 were out car shopping that month of February?  
7 Over half a dozen?

8 A I would say -- the car place was closed  
9 when Sheila went, that was once.

10 Q Your testimony is you only went out one time?

11 A With Sheila?

12 Q Uh-huh.

13 A Correct.

14 Q Isn't it true that during that month, you and  
15 her were constantly out car shopping?

16 A Not constantly, no, sir.

17 Q No?

18 A No.

19 Q So to the best of your recollection, you were  
20 not out four, five or six times shopping for a  
21 vehicle?

22 A Right.

23 BY MR. BENSON:

24 Thank you very much. I have nothing  
25 further, Judge.

REDIRECT EXAMINATION

BY

MR. KING

Q Could Sheila go out car shopping by herself?

A Yes.

Q And was it Sheila who was looking for a new car?

A Correct.

Q What was -- if you can recall, what do you remember Timmy wearing when you all were out car shopping on February 27th?

BY MR. BENSON:

Objection. This is outside the scope of cross. This was asked and answered on direct.

BY THE COURT:

Well, I believe the issue of car shopping did come up. You may answer.

BY THE WITNESS:

Thank you.

A Timmy was wearing a pair of blue jeans, I'm not sure what type of top he was wearing, but he did have on some type of sport jacket; he also was wearing a hat, multiple color.

780

1311

VANES 001320



1 Q Can you describe the term "sport jacket" as  
2 you used it? Like this (indicating)?

3 A No, it was a short jacket with a zipper,  
4 one type of a team jacket.

5 Q Okay, kind of an athletic kind of jacket?

6 A Yes.

7 Q Okay, what about the hat with different  
8 colors, how would you describe that?

9 A It's a skull cap; we'll just call it a  
10 knit hat.

11 BY MR. KING:

12 That's all I have, Mr. Hopkins. Thank  
13 you.

14 BY MR. BENSON:

15 No recross, Your Honor.

16 BY THE COURT:

17 All right, Mr. Hopkins, let me make you  
18 aware there's a separation of witness order in  
this case and you must not discuss your  
testimony with anyone who has not yet  
testified in this case.

22 BY THE WITNESS:

23 Yes, sir.

24 BY THE COURT:

25 Counsel, could I see you at the bench

1 here?

2  
3 WHEREUPON A DISCUSSION WAS HELD AT THE  
4 BENCH OUTSIDE OF THE HEARING OF THE JURY AND  
5 OFF THE RECORD REGARDING SCHEDULING.  
6

7 BY THE COURT:

8 We have two witnesses who are yet under  
9 subpoena for today who are yet to testify, so  
10 following our usual format, we'll give you a  
11 break at this point. And if you need to call  
12 to say that we'll be in session until about  
13 5:00, please do. There are also witnesses  
14 subpoenaed to testify tomorrow who will not  
15 have testified today. We're still working  
16 toward getting the matter completed tomorrow.

17 So with that, we'll let you break under  
18 the usual admonition.  
19

20 WHEREUPON THE COURT RECESSED AND  
21 RECONVENED AND THE FOLLOWING PROCEEDINGS WERE  
22 HELD IN THE PRESENCE AND HEARING OF THE JURY:  
23

24 BY MR. KING:

25 We'll call Richard Sesson, please.

1                   RICHARD SISSON,  
2           having been first duly sworn upon his oath,  
3           testifies as follows:

4                   DIRECT EXAMINATION

5                   BY

6                   MR. KING

7           Q       Would you state your name and spell your last  
8                   name for the record, please?

9           A       Richard Sisson, S-i-s-s-o-n.

10          Q       And what is your occupation, sir?

11          A       I'm the business manager for Paul Sur  
12                   Pontiac in Merrillville.

13          Q       And how long have you been so employed?

14          A       Approximately four years.

15          Q       As business manager, can you briefly describe  
16                   your duties there at Paul Sur Pontiac?

17          A       Well, it's a combination at the -- what I  
18                   do is try to secure financing for vehicles  
19                   that are being purchased through the  
20                   different banks and GMAC sources and so  
21                   on, do all the legal paperwork for  
22                   delivery.

23          Q       Do you have occasion periodically or have you  
24                   in the past had occasion when you have been  
25                   working that job to also help out in sales?



1 A Yes.

2 Q I would like to hand you what's previously  
3 been marked for identification as Defendant's  
4 Exhibit 6, it's a series of two business cards  
5 and a small slip of paper. And I'll ask you  
6 to take a moment, and real quick look at both  
7 sides of each one of those little documents  
8 and tell me if you recognize all or any of  
9 them?

10 A Well, the business cards are for one of  
11 our salesmen, our service manager, and the  
12 prices on the piece of paper are in my  
13 writing.

14 Q All right, do you recognize it as your  
15 handwriting?

16 A Yes, I do.

17 Q Now, do you recall the circumstances under  
18 which you had occasion to prepare that small  
piece of paper with the writing?

A Yes, I do.

Q And, first of all, let me ask you as you sit  
here today, do you have a specific  
recollection of the date you prepared that?

A No.

Q Do you have a recollection as to the day of

1 the week you prepared that little piece of  
2 paper?

3 A Yes, I do.

4 Q What day of the week did you prepare the piece  
5 of paper in Defendant's 6?

6 A That was a Thursday.

7 Q How do you know it was a Thursday as opposed  
8 to some other day?

9 A Thursday is the only evening that our  
10 service department is open after 5:00  
11 o'clock, and I recall the scenario, and  
12 our service department was open, so it  
13 would have been a Thursday evening.

14 Q What time is your agency, your car dealership  
15 open until on Thursdays?

16 A 8:00 o'clock.

17 Q Now, do you work habitually until the 8:00  
18 o'clock time?

19 A Yes, it's policy.

20 Q Were you on that schedule in February of 1992?

21 A Yes, I was.

22 Q Now, you indicated you recall, you recognize  
23 that piece of paper, you recall it was written  
24 by you and a Thursday, and you said you recall  
25 the scenario under which you wrote that, is

1           that correct, sir?

2           A           Yes.

3           Q           For the benefit of the ladies and gentlemen of  
4           the jury, can you share with us what you  
5           recall about writing up that piece of paper?

6           A           Well, I remember it was on a Thursday  
7           evening because I see our service  
8           department was open, it was approximately  
9           I would imagine about 6:30 in the evening  
10          that I quoted a couple of prices on a  
11          couple different cars, there were three  
12          people in the dealership, two men and a  
13          woman.

14          Q           Okay, let's stop for a second and ask you as  
15          best you can recall to give us a description  
16          of the two men and a woman that you saw on  
17          that Thursday.

18          A           I really can't describe them. They were  
19          three black individuals, but it's hard to  
20          describe them, and I couldn't.

21          Q           All right, and tell us what you recall about  
22          these three people on that Thursday in your  
23          presence. Do you recall what time?

24          A           Yes, approximately --  
25

786

*John Clerk's Office*

MAY 23 1997

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

1317

VANES 001326



1 BY MR. BENSON:

2 Judge, I would object on the  
3 grounds of relevancy unless a  
4 time and date for this  
5 conversation and occurrence can  
6 be articulated.

7 BY MR. KING:

8 Well, we're about to do the time. He has  
9 indicated what day.

10 BY MR. BENSON:

11 What month?

12 BY THE COURT:

13 Well, are you moving toward that, trying  
14 to get some identification of that?

15 BY MR. KING:

16 No, he's saying that he cannot recall the  
17 month, but we have had previously identified  
18 by other witnesses the date in question.

19 BY THE COURT:

20 Well, can we approximate from this witness  
21 that we're talking about 1992 or some period  
22 of time?

23 BY MR. KING:

24 Certainly.

25 Q What is your best recall of when this

1                   happened?

2           A           I would recall it being in the February-  
3                   March time.

4           Q           All right.

5           A           Still wintertime.

6           Q           1992?

7           A           Yes.

8           BY THE COURT:

9                   You may go on with the question now.

10          BY MR. KING:

11          Q           And, again, on a Thursday?

12          A           Yes.

13          Q           Okay, you were about to share with us your  
14                   recollection as to the time of day or night  
15                   that this happened. What's your recollection?

16          A           As I say, it was approximately around  
17                   6:30, between 6:30 and 7:00. I quoted a  
18                   few prices on a couple different cars; the  
19                   customers didn't want to take a test ride  
20                   in the vehicle. I had given them prices;  
21                   I was in and out of my office as far as  
22                   giving them prices and interest rates. I  
23                   do recall giving them a price on a vehicle  
24                   and they talked amongst themselves about  
25                   going to a competitor dealership, Anderson

1 Pontiac, so I imagine they left around  
2 7:00 o'clock because I do recall that  
3 there was enough time that they could go  
4 to this other dealership, get a price, and  
5 if mine was good enough that they would  
6 still have time to get back before we  
7 close at 8:00 o'clock.

8 Q Did they mention the name of the competitor  
9 whose dealership they were going to go to?

10 A Yes, they did.

11 Q And what name was given to you, sir?

12 A Anderson Pontiac in Crown Point.

13 Q Did they, in fact, leave, to your knowledge,  
14 with those pieces of paper marked as  
15 Defendant's Exhibit 6?

16 A As far as I know, yes.

17 Q And what is your best recollection as to the  
18 approximate time the three individuals would  
19 have left your dealership?

20 A I would have to say it would be no later  
21 than 7:00 o'clock in the evening because,  
22 again, I'd say that that would have given  
23 them time to get to the other dealership,  
24 get some prices on a car and still return  
25 to our dealership before we closed.



1 Q Did they ever return?

2 A No.

3 Q Now, did there come a time in the recent past  
4 where the gentleman here at this table came to  
5 your dealership to talk to you?

6 A Yes.

7 Q And can you recall for us as best you can when  
8 that would have been, sir?

9 A It would have been Tuesday of last week.

10 Q And in the course of talking with you, did he  
11 give you a series of photographs to look at?

12 A Yes, he did.

13 Q Were you able to identify anyone in those  
14 photographs?

15 A I was able to identify somebody in the  
16 group of pictures that I had previously  
17 seen in the dealership, yes.

18 Q Were you able to identify any of these people  
19 as people in this transaction you told us  
20 about with the card on the Thursday evening?

21 A As best as I recall, yes.

22 Q All right, now, are you sure about your  
23 identification?

24 A I could not be exactly one hundred percent  
25 sure, no.

1 Q All right, did you tell the gentleman that  
2 this person to your recall looked like one of  
3 the people in this group?

4 A Yes.

5 Q Are you able to pinpoint -- was it a male or a  
6 female that you picked out?

7 A Male.

8 Q And were you able to pinpoint -- were you  
9 talking to one or both of the males?

10 A Basically just one.

11 Q And would this be the male you were talking to  
12 or the male you were not talking to?

13 A This is the one that struck memory as the  
14 one I was talking to.

15 BY MR. KING:

16 Could I have, please, the State produce --  
17 thank you.

18 Q Okay, Mr. Sisson, I'm going to put before you  
19 three sets of photographs. One of them is  
20 marked Defendant's Exhibit 7 for  
21 identification, one of them is marked  
22 Defendant's Exhibit 8 for identification and  
23 one of them is marked State's Exhibit 17 as  
24 admitted into the evidence. Do you recognize  
25 those as the photo spreads you were shown a

1 week ago Tuesday by the investigator for the  
2 prosecutor?

3 A Yes, these are.

4 BY MR. BENSON:

5 Objection. That was not shown to  
6 him by myself, the prosecutor.

7 BY MR. KING:

8 Q The investigator for the prosecutor?

9 A Yes.

10 Q They were shown to you by this fellow here  
11 (indicating)?

12 A Yes.

13 Q Now, do they appear to be the same as when you  
14 saw them except for the little stickers on  
15 them now?

16 A Yes.

17 Q And can you share with us which photograph you  
18 picked out as the person you recall, one of  
19 the males in this group of two men and one  
20 woman that you were talking with as opposed to  
21 the fellow that wasn't part of the discussion?

22 A I picked the gentleman number three.

23 Q All right, just so we're sure here, are you  
24 talking about the photograph noted number  
25 three on Defendant's Exhibit Number 8?



1 A Yes.

2 BY MR. BENSON:

3 May I please take a look and see which  
4 picture he has been -- thank you.

5 BY MR. KING:

6 Q That's the photograph you selected -- you're  
7 not sure but you think that's the photograph  
8 of the man in this group that was talking to  
9 you, is that correct, sir, about the purchase  
10 of the car?

11 A Yes, as I recall.

12 Q How long did you spend with the people that  
13 were shopping about for cars on this Thursday?

14 A Oh, I would imagine fifteen to twenty  
15 minutes.

16 Q All right, and would this be on the interior  
17 of the Pontiac dealership?

18 A Yes, in the show room.

19 Q In the show room area?

20 A Uh-huh.

21 Q Can you describe the lighting for us in the  
22 show room area? Is it dimly lit, brightly  
23 lit?

24 A It's quite well lit, especially at night  
25 we have a lot of lighting on the cars.

1 Q All right, you had a good occasion to observe?

2 A Yes.

3 Q All right. Beside what you've told us, can  
4 you share with us anything else by way of  
5 description of the three people that you dealt  
6 with that evening, that Thursday evening?

7 A Not offhand, no.

8 Q Can you give us a sense on average in a given  
9 work week for you how many new customers you  
10 come in contact with when you're working in  
11 the sales capacity?

12 A Sales end of it, you could see probably  
13 two dozen or so.

14 Q Per week?

15 A Yes, uh-huh.

16 Q Now, did you ever obtain the names of these  
17 people?

18 A No, I did not.

19 Q Is there a reason for that?

20 A The only time that -- I have a bad memory;  
21 if I would ask their name, it would be an  
22 insult when I forget it, so I usually only  
23 ask it when there's an order being written  
24 or if the people want to take a test  
25 drive, I'll take a photocopy of their

1 driver's license.

2 Q Did the people in this instance want to test  
3 drive?

4 A No.

5 Q And were you to the point of writing up an  
6 actual sales order?

7 A No.

8 Q For that reason, if you can recall, did you  
9 ever inquire of them what their names were,  
10 any of them?

11 A No.

12 Q And your recollection is that you recall  
13 February or March of 1992, but you're sure it  
14 was a Thursday?

15 A Yes.

16 Q And you're sure about the times you shared  
17 here with the jury?

18 A As close to as possible, yes.

19 Q All right. And one of your recollections is  
20 feeling that someone could go from your  
21 dealership, get to Bob Anderson, and still  
22 have a chance to get back with you before the  
23 8:00 o'clock closing time, is that correct?

24 A Yes.

25 Q Do you recall -- and if I asked you this, tell



1 me so we don't repeat -- do you recall what  
2 vehicles these shoppers were inquiring about?

3 A As I recall, they were a bright blue Grand  
4 Am SA coupe.

5 Q A Grand Am automobile?

6 A Yes, Pontiac Grand Am.

7 Q Do you recall who in this group of three was  
8 actually the one going to be getting the car  
9 and driving the car?

10 A No, I really couldn't.

11 BY MR. KING:

12 All right, thank you, sir. Pass the  
13 witness.

14 CROSS-EXAMINATION

15 BY

16 MR. BENSON

17 Q Mr. Sisson, you testified here in court today  
18 that you believe that it was either the month  
19 of February or March these people came in,  
20 correct?

21 A Yes, uh-huh.

22 Q Now, you haven't always said that, have you?

23 A It would -- the dates have been told to  
24 me, but the timing, as I recall, it was  
25 winter months. And we had somebody come

796

1327

1                   into my office and see me approximately  
2                   six or seven weeks ago talking about  
3                   something that happened about five or six  
4                   weeks before, so --

5           Q       Let's back up a second. You said someone came  
6                   into your office and started talking about  
7                   this case, correct?

8           A       Yes, uh-huh.

9           Q       And where is that person from if you recall?

10          A       As I recall, it was the investigator for  
11                   the defense attorney.

12          Q       And at that time, you were informed of an  
13                   incident that happened in February, correct?

14          A       I don't recall that he told me the date  
15                   that it was, he just asked me if I  
16                   recalled -- if I recognized my notes and  
17                   if I could remember anything of the  
                 evening.

          Q       Okay. I'd like to ask if you recall your  
                 prior deposition in which we took a sworn  
                 statement from you?

22          A       Yes.

23          Q       And you took an oath in that statement,  
24                   correct, before you gave that?

25          A       Yes.

1 Q And you were asked the question about when the  
2 investigator came out from the defense  
3 attorney's office to your office, and I asked  
4 you --

5 BY MR. BENSON:

6 And this is page 11, counsel, line 13.

7 Q -- and I was asking you about this situation  
8 where these people came out to buy a car, and  
9 I asked you, "Why don't you tell me about that  
10 situation? Do you recall that day, first of  
11 all?" and your response was, "It was a  
12 Thursday." Do you recall that?

13 A Yes.

14 Q And my question was, "Thursday? What date?"  
15 Do you recall that question?

16 A Yes.

17 Q Do you recall your answer being, "I don't know  
18 a specific date. I know it was Thursday  
19 though because our service department is open  
20 late on Thursday. And it was in the evening;  
21 I would have to assume around 6:00 or 6:30."  
22 Do you recall that answer?

23 A Okay.

24 Q And my question was to you, "What month are  
25 you talking about?" and your answer was, "I



1 would assume February because that's the month  
2 everyone said it was." Do you recall that  
3 answer?

4 A I assume, yes.

5 Q Now, when you said it's the month everyone was  
6 telling you it was, who were you referring to  
7 the "everyone"? Was it the investigator that  
8 came out from the defense attorney's office?

9 A Yes, I would imagine.

10 Q Well, I'm not asking you to imagine.

11 A It would have to be, because nobody else,  
12 you know, I haven't talked to anybody else  
13 about it; that would have had to have been  
14 where I heard it.

15 Q So it was based upon your conversation with  
16 defense counsel's investigator that led you to  
17 think that it was in February?

A No, it wouldn't have been the defense  
counsel; it would have been last Tuesday  
where I probably heard the dates.

21 Q Well, let's back up a second though. When you  
22 talked with the defense counsel's  
23 investigator, didn't he ask you about February  
24 27th?

25 A I don't recall that he asked me about a

1                   specific date, no.

2           Q     Did he ask you if some people had been in  
3                 there?

4           A     Yes, and showed me my notes.

5           Q     Let's move on now. Let's go to line 24; the  
6                 question was, "I'm not asking what everyone  
7                 else is telling you. I'm asking you what you  
8                 recall when this group of people came in." Do  
9                 you recall giving the answer, "I really can't  
10                recall what month; all I know, it was  
11                Thursday"? And isn't it fair to say that you  
12                really don't know whether it was January,  
13                February or March when this group of people  
14                came in?

15          A     Yes.

16          Q     Let me show you what has been marked as -  
17                 Defendant's Exhibits 7, 8, and State's Exhibit  
               17 and ask you if those are the three sets of  
               photographs that you looked at when our  
               investigator was out there and then later in  
21               the deposition, correct?

22          A     Yes.

23          Q     And do you see the defendant's picture in  
24                 there?

25          A     Yes.

800

1331

1 Q Where is that at?

2 A Exhibit Number 17.

3 Q And when I asked you the question in that  
4 deposition about whether you recognized any of  
5 these people being out there, you did not pick  
6 the defendant's picture, correct?

7 A Correct.

8 Q You picked an individual, number three, in  
9 Defense Exhibit Number 8, correct?

10 A Yes.

11 BY MR. BENSON:

12 For the record, that is the name of  
13 Arister Thompkins.

14 Q Now, it's not your testimony that Arister  
15 Thompkins was out there but someone who looked  
16 like him was?

17 A Yes.

Q Or possibly him?

A Possibly.

Q But you did not pick the defendant as the  
21 person who was out there on that unknown  
22 Thursday in that unknown month at the  
23 beginning of this year?

24 A Correct.

25 Q Is it unusual if somebody were coming from

801

1332

VANES 001341



1 Gary to look at Pontiacs that they would first  
2 stop at your place and then want to comparison  
3 shop and go some place else?

4 A Sure, that happens quite often.

5 Q So when someone tells you, "Well, we're going  
6 to go check Bob Anderson," you don't find that  
7 extremely unusual if they're coming from Gary  
8 and going in that direction?

9 A No. It is unusual that they'll mention  
10 that they're going to go off -- usually,  
11 they don't voluntarily tell you that  
12 they're going to go off shopping, yes.

13 Q But you do have people tell you that on  
14 occasion that they're going to comparison  
15 shop, correct?

16 A Oh, yes, uh-huh.

17 Q Are there any other Pontiac dealerships close  
18 by other than Bob Anderson?

A There's one in Highland, Terry Shaver  
Pontiac, and there's one in Valparaiso.

Q And the closest one would be Bob Anderson,  
correct?

A I imagine it would be, yes.

Q I believe you testified also on direct exam in  
response to one of counsel's questions that

1 the reason you don't ask for names is because  
2 you have a bad memory.

3 A As far as recalling names, yes.

4 Q And it's your testimony that you do not  
5 recognize the defendant as ever being out at  
6 your dealership, correct?

7 A I can't say that I recall him being in  
8 there.

9 BY MR. BENSON:

10 At this time, Your Honor, I move to admit  
11 Defendant's Exhibit Number 7 and have it  
12 renamed as a State's exhibit into evidence.

13 BY THE COURT:

14 Well, you would have to have it remarked  
15 as a State's exhibit, or the defense could  
16 move.

17 BY MR. KING:

Exhibits 7 and 8, we'll stipulate to its  
admission.

18 BY THE COURT:

19 Okay, they can be admitted as marked then.  
20 Show them each admitted at this time. They do  
21 bear a State's Exhibit sticker.

22 BY MR. BENSON:

23 That was from the previous deposition. I

1 don't know if the Court wants to cross that  
2 out.

3 BY THE COURT:

4 We could, but it's admitted as Defendant's  
5 Exhibits 7 and 8.

6  
7 WHEREUPON DEFENDANT'S EXHIBIT NUMBERS 7  
8 AND 8 ARE ADMITTED INTO EVIDENCE.  
9

10 BY MR. BENSON:

11 Q You really have no idea what night this group  
12 of people were out there other than it was a  
13 Thursday, correct?

14 A Correct.

15 Q And you cannot say that this defendant was  
16 ever there?

17 A No, I can't.

BY MR. BENSON:

Thank you very much. I would like those  
exhibits shown to the jury whenever defense  
counsel is done with his examination.

21  
22 BY MR. KING:

23 No, we're in my case and displays to the  
24 jury will be as appropriate. I have one more  
25 witness today, and we can do the displays it



1           seems to me tomorrow morning because of the  
2           time.

3       BY MR. BENSON:

4           Well, we can do it at the end of the other  
5           witness; I have no problem with that.

6       BY THE COURT:

7           Well, or tomorrow morning since the hour  
8           is late.   All right.

9                       REDIRECT EXAMINATION

10                      BY

11                      MR. KING

12       Q   The prosecutor's question was, "So you can't  
13           say this fellow was in your dealership?" You  
14           can't say that he wasn't either?

15       A   True.

16       Q   You can't say that he wasn't one of the two  
17           gentlemen in this group?

18       A   Correct.

19       Q   And your focus now -- correct me if I'm wrong  
20           -- you want to sell a car, am I right?

21       A   Yes.

22       Q   I mean that's what you're there for and that's  
23           what puts food on your family's table,  
24           correct?

25       A   Yes.

1 Q Now, the way this group -- the way you figured  
2 this group out -- correct me if I'm wrong --  
3 there was one fellow and the lady that were  
4 the serious buyers, is that correct?

5 A Yes.

6 Q And there was one fellow not really part of  
7 this transaction, am I correct?

8 A Yes, that's how I recall them.

9 Q Now, as a salesman whose job is to sell a car,  
10 are you going to be focused on the folks  
11 wanting to buy the car or are you going to be  
12 focused on somebody they brought along for the  
13 ride?

14 A On the people that are generating interest  
15 in the car.

16 Q All right. And, again, you're not saying that  
17 Arister Thompkins was the fellow, you're  
18 saying that photograph out of what you were  
shown, out of what you looked at, is your  
closest and best recall of the fellow that was  
doing some of the talking?

A Negotiating.

23 Q Negotiating, is that correct?

24 A Yes.

25 BY MR. KING:

806

1337

1 Can I have one moment, Your Honor?

2 BY THE COURT:

3 All right.

4 BY MR. KING:

5 For the record, could the record reflect  
6 that I am walking in the court, the well of  
7 the court, with a prior witness in this case?

8 BY THE COURT:

9 Yes.

10 BY MR. KING:

11 Q Why don't you take a minute and look at the  
12 gentleman here on my right, Mr. Sisson? Have  
13 you had a chance to look at him?

14 A Yes.

15 Q Did you have a chance to look at that man?

16 A Yes.

17 Q Could he have been the fellow in this  
18 transaction?

19 A Possibly.

20 Q Does he kind of resemble that fellow in --

21 BY MR. BENSON:

22 Objection. That's leading, and  
23 this question has been asked and  
24 answered.

25 BY THE COURT:

807

1338



1 Sustained.

2 BY MR. KING:

3 Q What, if any, relationship does his appearance  
4 bear to the picture you selected?

5 BY MR. BENSON:

6 Objection, that's argumentative,  
7 Judge.

8 BY MR. KING:

9 It's not argumentative, Your Honor.

10 BY THE COURT:

11 Overruled. You may answer that, Mr.  
12 Sisson.

13 BY THE WITNESS:

14 A Just, you know, complexion and generally  
15 the way he looks. They're similar, yes.

16 BY MR. KING:

17 Q Okay. So you're given some pictures by the  
18 gentleman for the State and you're doing your  
19 level best, am I correct, to pick out a  
20 picture, what you can look at, of this person  
21 from February, from this Thursday, and that  
22 picture is selected, right?

23 A Yes.

24 Q I mean and you're doing your best to try and  
25 identify somebody, am I correct?

1 A Yes.

2 BY MR. KING:

That's all I have. Thank you, Mr. Sisson.

BY MR. BENSON:

No further questions.

BY MR. KING:

The defense calls Ronald Moos.

RONALD MOOS,

having been first duly sworn upon his oath,  
testifies as follows:

DIRECT EXAMINATION

BY

MR. KING

Q Could you please state your name for the  
record and spell your last name for the  
benefit of the court reporter?

A First name is Ron, last name is Moos, M-o-  
o-s.

Q And what is your occupation, sir?

A Salesman for Bob Anderson Pontiac.

Q And how long have you been so employed?

A At Bob Anderson, it's about a year.

Q All right, were you employed there in February  
of 1992?

A Yes, sir.

809

1340

1 Q Now, I ask you to direct your attention --  
2 Thursday evenings, is that a regular work time  
3 for you?

4 A Well, our schedule changes every week.

5 Q In February of 1992.

6 A Well, it does all the time; we change our  
7 way we'll work; you work one Thursday  
8 night and then the next one you work a  
9 different. We work a different shift  
10 every week.

11 Q All right. Now, let me ask you if there came  
12 a time when you had occasion to meet with two  
13 young African-American men and one young  
14 African-American woman interested in  
15 purchasing a car from your dealership?

16 A Yes.

17 Q Do you have a recollection of approximately  
18 when that was?

19 A February.

20 Q Of what year?

21 A This year.

22 Q 1992?

23 A Yes, sir.

24 Q And do you have a recollection of what day of  
25 the week it would have been? And if you



1 don't, that's fine.

2 A No, I don't remember exactly.

3 Q Do you have a recollection of the time of day  
4 or night it would have been?

5 A It was in the evening.

6 Q What time does your dealership close in the  
7 evening?

8 A 8:30.

9 Q Do you have any recollection of when in  
10 relationship to the 8:30 closing time?

11 A Yeah, I remember 'cause I had to stay late  
12 and they didn't buy nothin'.

13 Q All right.

14 A They were there a long time.

15 Q Can you tell us from your first contact with  
16 these three people what you remember happening  
17 that evening?

18 A They came in -- it had to have been right  
19 around the 7:00 o'clock, 7:30 hour,  
20 somewhere in there. And they looked at --  
21 they saw a van they said.

22 Q A van?

23 A A van we had just got in.

24 Q Let me ask you a little bit about this van if  
25 I may. What do you recall in terms of the

1 description of the van?

2 A It's a black and gray GMC trick van.

3 Q Do you recall the year?

4 A '88.

5 Q Now, you said a trick van. What is a trick  
6 van?

7 A Like a conversion van where they got the  
8 fancy seats and the bed in the back and  
9 the curtains on the windows and the  
10 running boards and the lights and stuff.

11 Q Now, do you recall this group of people, these  
12 two African-American men, African-American  
13 woman first being interested in looking in  
14 that van, is that correct?

15 A Yes, sir.

16 Q Are you sure it's that van?

17 A Right, it's the only one I had.

18 Q Now, do you know when Bob Anderson Pontiac got  
19 that van into their stock?

20 A The 26th of February of this year, '92.

21 Q February 26th, 1992?

22 A Yes, sir.

23 Q In stock for the first time?

24 A Yes, that's when it come in trade.

25 Q It was traded in by someone?

Wainwright's

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Anna M. Antone  
CLERK LAKE SUPERIOR COURT

1343

VANES 001352

1 A Yes, sir.

2 Q February 26th, 1992 is the first day Bob  
3 Anderson Pontiac had possession of that van,  
4 is that correct, sir?

5 A Yes, sir.

6 Q Now, you say these folks were interested in  
7 checking it out and looking at it. Tell us  
8 what you remember with respect to them looking  
9 at this van.

10 A They were looking for something that -- it  
11 sounded like they had a big family, a lot  
12 of people to put in it, and the lady was  
13 the buyer, and I couldn't figure out -- I  
14 couldn't get the seat up in the van, and  
15 she's a short lady, and I finally had to  
16 ask somebody, because they had so many  
17 levers on the thing, how to get the seat  
18 up because she couldn't see like over the  
19 nose in the front.

20 Q And what, if anything, did you do to remedy  
21 that?

22 A Well, I finally got the right lever to get  
23 the seat up; I asked somebody and got the  
24 seat moved up and then they took it for a  
25 ride.



1 Q Now, when you say "they," who do you mean?

2 A There was a lady and two gentlemen.

3 Q The best you can recall, what do you remember  
4 about these three folks in terms of a  
5 description?

6 A Three black people, two short and one  
7 taller. The lady was short and the man  
8 was short, and then there was a taller  
9 fellow.

10 Q What about relative shade of skin color? Was  
11 it all the same, one lighter or darker?

12 A No, everybody was different.

13 Q Now, after -- you say they went for a test  
14 drive?

15 A Yes.

16 Q In the van, is that correct?

17 A Yes.

18 Q And did they return to the dealership?

19 A They came back and we talked about price,  
20 and then they asked about -- we had  
21 finance rates on, so they wanted to see --  
22 I knew they had been to another dealership  
23 when they started talking about rates, so  
24 I put them in a Sunbird, which is a small  
25 car. They took that out for a ride, and

1                   then the lady said it was just too small  
2                   and so did the fellow with her.  
3       Q       Now, you say the fellow with her. And you  
4       told us earlier there was two men and a woman.  
5       A       Right.  
6       Q       Did you focus on one fellow over the other?  
7       A       Yeah, he was like -- I call him the maven.  
8       Q       The what?  
9       A       The maven. You know, he was trying to  
10       help her out and impress me that he knew a  
11       lot of stuff about buying cars.  
12       Q       How long have you been selling cars for?  
13       A       Twenty-five years.  
14       Q       Do you try to size up customers as you start  
15       trying to work a deal?  
16       A       Yeah, it's normal.  
17       Q       All right. Now, what did you size up about  
18       this situation as you began talking with them?  
19       A       Well, she was the lady that seemed like  
20       she was going to buy it but she wasn't  
21       going to do anything unless the fellow  
22       said that, you know, it was all right.  
23       That's the way it seemed to me.  
24       Q       And how do you as a salesman work that  
25       situation?

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1346

1 A Well, you concentrate more on him and try  
2 not to make him out to be dumb in front of  
3 somebody else, you know; you don't want to  
4 do that, and then they'll get mad at you  
5 and leave.

6 Q And is that how you approached these  
7 prospective buyers?

8 A Yeah, after you get the drift of what's  
9 going on.

10 Q All right. So was your focus on this one  
11 fellow as opposed to the other fellow?

12 A I didn't pay much attention to the other  
13 fellow.

14 Q He didn't seem to be a part of the buying  
15 group?

16 A No, he was just there, you know.

17 Q Do you recollect anything about this other  
18 fellow, you know, what he was dressed like,  
19 anything like that?

20 A I just remember he was tall, probably as  
21 tall as I am, and he had on -- I think it  
22 was a knit -- I call them a navy hat or  
23 ski hat.

24 / Q Do you remember what color that was?

25 A It was just like multi-color.



1 Q Multi-colored?

2 A Yeah, and I think he had like a three-  
3 quarter length jacket on. He was always  
4 in there playing with the radio and other  
5 stuff, you know, inside the van.

6 Q Now, did these folks drive anything besides  
7 the van?

8 A Yes, well, they drove -- I said they  
9 drove a Sunbird, and then they came back  
10 and then they drove a Grand Am.

11 Q Now, by the time they returned from the third  
12 test drive, did you spend time with them from  
13 that point forward?

14 A Oh, yeah, then we sat in my office for --  
15 well, we was past closing time.

16 Q Past closing time you say?

17 A Yes, sir.

18 Q Do you have a recall as you sit here today how  
19 far past closing time?

20 A Somewhere between 8:30 and 9:00, you know,  
21 a quarter till or something like that,  
22 because when I left, they were still  
23 sitting there.

24 Q You say when they left, they were still  
25 sitting where, sir?

1 A Well, in the car they came in. I thought  
2 they were going to check out the van some  
3 more 'cause I couldn't pin them down to,  
4 you know, one unit. A lot of people do  
5 that.

6 Q Now, did they ever come back?

7 A No, sir.

8 Q Have you ever seen any of these three people  
9 again up to and including today?

10 A Yes, sir.

11 Q When?

12 A When I was standing outside there.

13 Q Outside of this courtroom in the hall?

14 A Yeah, where the bailiff there told me to  
15 stay. I recognized the lady and the short  
16 fellow out there.

17 Q Well, do you remember what the lady was  
18 wearing today?

19 A She's got a nice little blue dress on.

20 Q What about the gentleman?

21 A Brown, red, some kind of suit -- maroon.

22 I can't tell that color too good.

23 BY MR. KING:

24 May I have a moment again, Your Honor?

25 BY THE COURT:

1 Yes.

2 BY MR. KING:

3 For the record, I have entered the room  
4 with the same gentleman I did the previous  
5 witness together with a young lady.

6 BY THE COURT:

7 Yes.

8 BY MR. KING:

9 Q Mr. Moos, to my left are two people. Are  
10 these the people you recognized?

11 A Yes, sir.

12 Q Are these the people that were there that  
13 night?

14 A Yes, sir.

15 Q With the van and the other things you told us  
16 about?

17 A Yes, sir.

18 Q Are you sure?

19 A Yes.

20 Q Now, what about this fellow over here  
21 (indicating)? Do you recognize him?

22 A Not really, sir.

23 Q Could he be the third man?

24 A It was wintertime and everybody had coats  
25 and looked different.



1 Q Would it be fair to say you don't know?

2 A Yes, sir; I'm not sure.

3 Q Now, when was it that you informed me that you  
4 recognized somebody out in that hall?

5 A Right now when you asked me.

6 Q During when I was out in the hall during  
7 recess?

8 A Yes, sir.

9 Q You had just walked in and seen these people,  
10 is that correct?

11 A Well, when I walked in, they weren't  
12 there.

13 Q Okay, when did you see them?

14 A Well, I was sitting out there and there  
15 was another fellow out there, and then the  
16 lady come out first, and then I recognized  
17 her when she come out; and it was quite  
18 some time later that the fellow came out.

19 Q I see. They came out this door here, the  
20 courtroom door?

21 A Yes, sir, because I was back over there.

22 Q All right, they came out separately some time  
23 apart?

24 A Yes, sir.

25 Q Now, do you recollect meeting this gentleman

1 here that I'm pointing to seated at the  
2 prosecution table?

3 A Yeah.

4 Q And do you recall when you had occasion to  
5 meet with him?

6 A A few days ago or a week ago.

7 Q Okay. Now, I'm guessing that the show room  
8 over at Bob Anderson's has got some lighting  
9 in it. How would you describe the lighting?

10 A It's old and bad.

11 Q Old and bad. You don't like it?

12 A No -- it's no good.

13 Q Are you able to see inside? How would you  
14 compare it to here?

15 A Well, it's real bright in here; it's not  
16 there.

17 Q Not as bright there?

18 A No.

19 Q Okay. And how long did you spend with these  
20 folks, the three individuals on the van and  
21 all this other business?

22 A Better than an hour.

23 Q Okay. When you saw this gentleman, do you  
24 recollect when that would have been?

25 A Yeah, I remember, because his name is the

1 same as mine; it was about a week ago.

2 Q Okay, did he show you some pictures?

3 A Yes.

4 Q Asked you to pick somebody out?

5 A Yes.

6 Q Were you able to pick anybody out?

7 A Yes.

8 Q Okay, now, were you sure when you picked out  
9 the picture?

10 A Yeah.

11 Q I'm going to put in front of you Defendant's  
12 7, Defendant's 8 and State's 17. Did you ever  
13 see those pictures before?

14 A Yeah, that's the ones he showed me.

15 Q Do you remember which picture you picked out?

16 A That one (indicating).

17 Q You're pointing to number three on Defendant's  
18 Exhibit 8, is that correct?

19 A I don't have my glasses but, yes, this one  
20 here, yes, sir (indicating).

21 Q Would that be the maven you told us about, the  
22 fellow that was with the young lady?

23 A Yeah, he was the boss.

24 Q He was the boss?

25 A Yeah.



1 Q Okay. And the fellow that walked in here a  
2 minute ago in the reddish suit --

3 A Uh-huh.

4 Q -- is that the maven?

5 A Yeah.

6 Q Is that his picture?

7 A I don't know -- yeah, it looks like him.

8 Q Okay, the picture you picked out looks like  
9 the fellow that just walked in here, is that  
10 right?

11 A Yeah.

12 Q And the picture we're talking about is Arister  
13 Thompkins, at least according to what is  
14 written on the back, is that right?

15 A Right.

16 BY MR. KING:

17 Thank you, sir. No further questions.  
18 The prosecutor may have some.

19 CROSS-EXAMINATION

20 BY

21 MR. BENSON

22 Q Mr. Moos, did you have glasses on when these  
23 people came in that evening?

24 A I only wear them for something that is  
25 little like that.

1 Q But you can see my face fine and her face?

2 A Yeah, I can see fine; I just can't see  
3 little things.

4 Q Do you wear contacts or glasses at all?

5 A No, just for regular reading glasses when  
6 I need to read something.

7 Q Now, you stated that this third party who you  
8 can't identify was in the van, that trick van,  
9 correct?

10 A Yes.

11 Q What was he doing in the van?

12 A Tuning in the radio. It had a fancy radio  
13 in it, because I was talking to the other  
14 people and he was --

15 Q Did you have a chance to observe him?

16 A Well, you're concentrating on these  
17 people, you know, over here; I could see  
18 somebody was in there.

19 Q What was his demeanor? How would you  
20 summarize his demeanor from what you observed?

21 A I thought he had a few drinks or  
22 something; he was goofing around with the  
23 radio.

24 Q Well, why would you think he had something to  
25 drink?

1 A I don't know. People act different, and  
2 maybe I do it when I have a few drinks,  
3 you know.

4 Q Okay, you thought the person had been drinking  
5 who was playing with the radio?

6 A Yeah.

7 Q It's your testimony that you recognize two  
8 people that were in there but do not recognize  
9 the third person, just that there was a third  
10 person?

11 A Yes, sir.

12 Q This van, when did you find out that  
13 information about when you received that van  
14 into your dealership?

15 A The other day when I was with you and --  
16 I'm sorry, I forgot your name. You asked  
17 me if I could look up some records to find  
18 out when we get stuff in; and you asked me  
19 today, and I didn't have that record and I  
20 made a call and asked when the van was  
21 there and they looked in the police book  
22 and it was in the police book.

23 Q What is a police book?

24 A Well, everybody has to have a police book  
25 who you take something in from and then



1                   who it goes out to, and it's required by  
2                   the state. It's called a police book.

3       Q       And this van was brought in the dealership you  
4               say when?

5       A       The 26th of February.

6       Q       Okay, and that was a trade-in?

7       A       Yes, sir. See, we don't get a lot of  
8               vans.

9       Q       Okay, so the van is brought in as a trade-in  
10              and you guys take time to wax it or to clean  
11              it out. You just don't put it out there like  
12              it comes in, do you?

13      A       Yes. I remember this van, because it  
14              hadn't been detailed, but it come in, it  
15              was just -- it was nice.

16      Q       So you guys, just as it comes in, you put it  
17              right on the show room floor?

18      A       Well, no, it was sitting outside for  
19              people to see because, as I say, it was so  
20              clean. We were going to send it out, but  
21              as I say, it was so clean; we were going  
22              to send it out, but you could show it to  
23              people. You know, you get something like  
24              that once in a while.

25      Q       How many vans did you have in the dealership

1 at that time, if you recall?

2 A That one.

3 Q No other vans in the dealership?

4 A No, sir. See, we don't have no trucks so  
5 it's very seldom we get one in.

6 Q How long have you been there for?

7 A Going on a year, just about a year.

8 Q About a year?

9 A Yeah.

10 Q Have you ever seen any other vans in the  
11 dealership during that year?

12 A We just had two just last month.

13 Q You had two last month?

14 A Yes, sir.

15 Q Which kind were those?

16 A One was a GMC and the other was a Astro  
17 Chevy.

18 Q Now, your previous testimony in a deposition  
19 was that you don't even recall what month  
20 these people came into the dealership,  
21 correct?

22 A Yeah -- I said January or February.

23 Q Just that it was cold, right?

24 A Right.

25 Q Is that unusual to have a couple come in with

1 a male and a female? Strike that, and let me  
2 rephrase it. Do people normally come in by  
3 themselves to shop for a car, or are the  
4 majority of your customers male and female  
5 that come in together as a couple?

6 A It's probably fifty-fifty.

7 Q So this third person could have been anybody?

8 A I said I didn't remember him.

9 Q And it's your testimony today that you cannot  
10 recognize the defendant as the third person  
11 who was in the dealership?

12 A No, sir, not really.

13 Q Now, an investigator came out from the defense  
14 attorney's office to speak with you quite a  
15 while ago, didn't he?

16 A Yeah, it was a long time ago.

17 Q Do you recall when that was, approximately?

18 A March.

19 Q Are you asking me or --

20 A Oh, just March came into my mind.

21 Q And did he ask you about this incident that  
22 you testified to?

23 A Yes, sir.

24 Q Did he ask you what these people did when they  
25 were at the dealership?



1 A Yes.

2 Q What did you tell him?

3 A Well, at the time, see, I still had some  
4 of the figures when he was there on a  
5 paper, you know. We were going with  
6 payments so I had on the van, and then I  
7 think we had three point nine (3.9)  
8 financing on the Sunbird, so I still had  
9 that at the time but it's just, you know,  
10 that I don't keep that stuff that long.

11 Q Did you tell him though about what they had  
12 looked at?

13 A I think we went over the same thing we  
14 just talked about now.

15 Q Okay, the same thing?

16 A Yeah, because it's hard, you know, you get  
17 people in and they drive so many different  
18 things -- it's really a pain -- but it's  
19 part of the job, you know. They switch  
20 from like a truck to a little car and back  
21 to a bigger car, so --

22 Q And at that time though, you did talk with the  
23 defense attorney's investigator about what  
24 these people had driven, correct?

25 A Yes, sir.

1 Q And you did tell them that it was this van,  
2 right?

3 A Yes, sir.

4 Q And it wasn't until after your deposition this  
5 last week that you then were able to obtain  
6 this information about this van?

7 A Well, I didn't even think of it until that  
8 fellow asked me when we were sitting there  
9 to look up the records.

10 Q But you had spoke to his investigator almost  
11 -- March, April, May -- twelve weeks ago, and  
12 you had basically the same conversation,  
13 correct, about what these people drove?

14 A Yeah.

15 Q And it never crossed your mind then to look up  
16 any record of this car?

17 A No, as I said, I told you I had the dates  
18 down that they were in, but I have thrown  
19 that away since then; I figured that guy  
20 had it, I didn't need to keep that stuff  
21 any more.

22 Q But it is just since that deposition that your  
23 testimony is that this car came into the  
24 dealership's possession on 2-26-92, correct?

25 A I wasn't asked before when it came in.

1 Q Okay, but you were asked about what vehicles  
2 were driven?

3 A Right, but not when it came in.

4 Q The figures that you gave to who you referred  
5 to I believe as a maven and the female that  
6 was with him, there are no dates on those  
7 figures, are there?

8 A I don't have them any more.

9 Q All right, did you write anything down and  
10 give it to them though?

11 A I gave them my card; I don't remember if I  
12 put any prices on the back or not.

13 Q And you talked a little bit about your work  
14 schedule. You said that your schedule changes  
15 every month or so?

16 A Yeah, every week. Like today is a  
17 Thursday; I only work from 1:00 o'clock to  
18 7:00. Like last Thursday, I worked a  
19 twelve-hour day, so it changes; you don't  
20 have the same twelve-hour day like every  
21 Thursday. It would be a different day.

22 Q Every other Thursday?

23 A Yeah, so I think like next Thursday like I  
24 work 9:00 to 6:00 or something.

25 Q How late is the dealership open today?

831

MAY 23 1997

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

1362

VANES 001371



1 A Today, 8:30.

2 Q And you work until 7:00 o'clock on Thursday?

3 A No, today my schedule is I work until  
4 8:30, until we close.

5 Q And that changes on a monthly or weekly basis?

6 A Every month you get a -- a calendar with  
7 your name on it and what days you work.

8 In fact, I still have the one from then.

9 Q To the best of your recollection, you cannot  
10 ever recall seeing this defendant before,  
11 correct?

12 A I'm sorry, sir, no.

13 BY MR. BENSON:

14 Thank you very much, Mr. Moos.

15 REDIRECT EXAMINATION

16 BY

17 MR. KING

18 Q When these folks looked at that van, it was  
19 right after that van had come in, is that  
20 correct?

21 A Yes, sir.

22 Q Because it hadn't -- when you say "detailed,"  
23 that means the kind of cleaning you guys do at  
24 dealerships to really make that vehicle look  
25 its best, is that correct?

1 A Right.

2 Q And it was still in the condition it was in  
3 when it was traded in, is that correct?

4 A Correct.

5 Q And you hadn't even figured how to work the  
6 seat at that point, is that correct?

7 A No. I hadn't really looked in the thing.

8 Q All right. And, again, you're saying you  
9 can't identify him as the third man but you  
10 can't eliminate him as the third person?

11 A Right.

12 BY MR. KING:

13 Thank you.

14 BY THE COURT:

15 Mr. Benson, anything further?

16 BY MR. BENSON:

17 No. Thank you.

18 BY MR. KING:

19 Move for the admission into evidence of  
20 what's previously been marked for  
21 identification as Defendant's Exhibit 6. For  
22 the record, I'm showing it to counsel for the  
23 State.

24 BY MR. BENSON:

25 The State has no objection.

1 BY THE COURT:

2 Admitted.

3  
4 WHEREUPON DEFENDANT'S EXHIBIT NUMBER 6 IS  
5 ADMITTED INTO EVIDENCE.

6  
7 BY MR. KING:

8 The defense moves for preservation on the  
9 writing of the blackboard if that's possible  
10 between now and the conclusion of this case,  
11 Your Honor.

12 BY THE COURT:

13 Well, unless it's pre-empted by something  
14 else. Counsel might want it for something  
15 else; I don't know.

16 Ladies and gentlemen of the jury, we'll  
17 excuse you for the day now and order you back  
18 in tomorrow again at 10:00. My secretary kind  
19 of fooled me this morning and put something  
20 else on the court call that involved a matter  
21 not only in Indiana but Florida; it took some  
22 time and we had a little bit later start than  
23 I said we would since she didn't think I'd  
24 mind, but it did hold us up a bit. I hope  
25 that tomorrow we're able to start on time.



1           Let me also tell you that if we're unable  
2           to finish tomorrow -- we're still working  
3           toward that -- but if we're unable to finish  
4           tomorrow, all things being equal, our schedule  
5           would be to finish on Monday. Now, when that  
6           happens, when a case goes over the weekend  
7           like that and you have to come back on a  
8           Monday, of course, we have to admonish you  
9           strongly about the time gap in there between  
10          hearing evidence and so forth, but it would  
11          mean that you wouldn't be eligible for  
12          selection on another jury next week, you would  
13          just be faithful to this case and complete  
14          this one, you wouldn't be part of the regular  
15          jury panel to be selected for other cases.

16                I don't know if that's going to happen,  
17                but I brought it up now in case it does; it's  
18                something to think about.

19                But for now, we'll just admonish you again  
20                not to converse about the case, not to consult  
21                any media accounts of these proceedings, and  
22                not to form or express any opinion on the  
23                evidence presented up to this point.

24                The jury is excused until 10:00 tomorrow,  
25                June 12th.

1 WHEREUPON THE JURY WAS EXCUSED FROM THE  
2 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE  
3 HELD OUTSIDE OF THEIR PRESENCE AND HEARING.  
4

5 BY THE COURT:

6 What is the envelope you were asking me  
7 about?

8 BY MR. BENSON:

9 I was just informed by the family that the  
10 defendant's sister gave Mr. King an envelope  
11 and they were concerned because then he walked  
12 back there, and I just told them I'd ask.

13 BY MR. KING:

14 Yeah, I was given an envelope which I  
15 looked at, and I never -- what are they  
16 saying, I gave it to the Judge?

17 BY MR. BENSON:

18 No, they just said they saw you walk back  
19 there with it.

20 BY THE COURT:

21 They were concerned about that apparently.

22 BY MR. KING:

23 Yeah, she did take it out of her purse  
24 too. It was a communique.

25 BY MR. BENSON:

1                   You had walked off the bench; it was  
2                   during a break and you walked out and then he  
3                   did, and they're saying, "Hey, what's going  
4                   on?"

5           BY THE COURT:

6                   Thanks a lot.

7           BY MR. KING:

8                   I'm sorry. What it was, I walked out that  
9                   door.

10          BY MR. BENSON:

11                   I told them you were above reproach.

12          BY MR. KING:

13                   No, she gave me some an envelope with some  
14                   documents in there; in fact, I still have it  
15                   (indicating).

16          BY MR. BENSON:

17                   Well, I told her I'd ask, so --

18          BY THE COURT:

19                   Well, I'll tell you, this is not my week,  
20                   but rest assured --

21          BY MR. BENSON:

22                   Judge, in regard to Monday, I have another  
23                   murder trial that's supposed to start Monday  
24                   in Judge Letsinger's court. I anticipate us  
25                   being done or working Saturday.



1 BY THE COURT:

2 Things are tough all over, you know. My  
3 court reporter's immediate reaction would  
4 probably be the reaction of many people to  
5 have that word mentioned. Well, we'll see.

6  
7 WHEREUPON THE COURT ADJOURNED FOR THE DAY.

8  
9 WHEREUPON THE COURT RECONVENED AND THE  
10 FOLLOWING PROCEEDINGS WERE HELD OUTSIDE OF THE  
11 PRESENCE AND HEARING OF THE JURY ON JUNE 12,  
12 1992:

13  
14 BY THE COURT:

15 Mr. King, you had something you wanted to  
16 put on the record?

17 BY MR. KING:

18 Yes, I intend to at this point in the  
19 proceedings move for the Court to take  
20 judicial notice of certain demographic data  
21 obtained from the 1990 census. I previously  
22 provided the State with a copy of the data  
23 obtained from the Lake County Public Library.

24 And supportive of our request, I would  
25 cite the Court to, and in terms of the Court's

1 authority to take judicial notice of census  
2 information, a series of cases. If you want  
3 to look here rather than have me reading off  
4 the cites, that's fine.

5 BY THE COURT:

6 Well, I know that there's a section in  
7 Indiana Practice, Indiana Evidence, Miller's  
8 section 201.203 which talks about this and  
9 says the courts will take judicial notice of  
10 population figures of a city, county as shown  
11 by a state or federal census, so that's  
12 probably what your cases say. There's a  
13 series in Miller also, so that's what the law  
14 is on it, but there might be some special  
15 objection in this case.

16 BY MR. BENSON:

17 Just two, Judge: One of our objections is  
18 relevancy. I guess tangentially it's related  
19 if you want to say that there's "X" amount of  
20 people out there in the population who are  
21 black males. Maybe somewhere along the road  
22 there's a hint of relevancy but I don't think  
23 it's at least probative at all on this point.  
24 As well as the document itself is two years  
25 old; I can't cite anything, but I believe the

1           population has been declining.

2       BY MR. KING:

3           The problem is that Constitutionally the  
4           census is only conducted every ten years, so  
5           whether we like it or not, we will be forced  
6           to live with this data until the year 2000.

7       BY THE COURT:

8           And that includes for aid that the city  
9           gets and all the rest.

10      BY MR. KING:

11           Exactly. They only do it every ten years  
12           and that dictates how many congressmen, how  
13           much money and all these other factors are  
14           based on this data. And, you know, frankly,  
15           had the case been tried prior to the census of  
16           '90, we would be dealing with dramatically  
17           different figures that really were much less  
18           reflective of the true state of affairs in the  
19           late '80s, but that's how they do it.

20           The relevance I think in a mis-  
21           identification case is fairly evident. It  
22           allows the jury to hear as best as data will  
23           permit the number of people fitting a generic  
24           classification in terms of age, in terms of  
25           sex and in terms of race rather than engaging



1 in guess work, and I think that it is  
2 certainly relevant, which I think the State  
3 even conceded that tangentially it certainly  
4 is relevant.

5 But I believe I am entitled rather than  
6 sitting up here and speculating or having  
7 jurors engage in speculation as to how many  
8 young black males there are in the city of  
9 Gary, we have some basis to cite that data to  
10 support that.

11 BY MR. BENSON:

12 I would just argue that's overly broad  
13 because, number one, it doesn't say how many  
14 of these black males have bad skin or it  
15 doesn't say how many of them are over five  
16 seven, which is the smallest height given.

17 BY MR. KING:

18 Again, counsel is indicating arguments he  
19 can well make, but we have to start with  
20 whatever data is available. They break it  
21 down according to age and race and sex, and  
22 that's as far as they go.

23 BY THE COURT:

24 Well, the case law says that it's the  
25 accepted thing to do, and I think you have

1           developed it in your case that this is the  
2           defense you're pursuing.

3       BY MR. KING:

4           Yes.

5       BY THE COURT:

6           So I would permit it. There is nothing in  
7           the law of physics to say this crime couldn't  
8           have been committed by someone who didn't live  
9           in the city of Gary.

10          Are you going to offer this blank document  
11          with nothing but the figures on it and ask me  
12          to take notice and pass it to the members of  
13          the jury? Is that what is being done here?

14       BY MR. KING:

15           I'm not necessarily asking for  
16           publication; I'm just asking that it be  
17           admitted into the evidence after having been  
18           judicially noticed and be available for  
19           closing and go back in the jury room for  
20           deliberations.

21       BY MR. BENSON:

22           I would just ask that the amounts -- since  
23           there is nobody has said this person was a  
24           teenager, that from nineteen years on up,  
25           twelve and thirteen years old, those numbers

1 not be referred to, and since nobody said that  
2 this person was in their thirties that the  
3 last number not be referred to.

4 BY MR. KING:

5 Well, I would say that I'm certainly not  
6 going to argue that all the numbers are  
7 applicable, but to arbitrarily draw a line  
8 there between twenty and nineteen because the  
9 best description we have is mid twenties and  
10 so forth. So the point being that there's no  
11 prejudice to the State, the jury is going to  
12 rely upon their recollection of the testimony  
13 and they're not to limit their view of which  
14 columns they're going to be looking at. It's  
15 inappropriate.

16 BY MR. BENSON:

17 I would just argue that anybody nineteen  
18 years or younger have never been referred to  
19 and it would be irrelevant.

20 BY THE COURT:

21 I think it's a matter of argument. I'll  
22 admit it as it is.

23  
24 WHEREUPON DEFENDANT'S EXHIBIT NUMBER 9 IS  
25 ADMITTED INTO EVIDENCE.



1 BY THE COURT:

2 Anything else before we go on?

3 BY MR. KING:

4 Yes, after we handle that procedurally --  
5 and what I'll do is go ahead and mark this as  
6 a defense exhibit -- I'm going to ask leave of  
7 Court by way of demonstration to permit myself  
8 and my client to approach the jury box and  
9 permit the jury to get a closer look at the  
10 physical appearance of my client than they  
11 have been able to do given the layout of the  
12 courtroom here, that we're on the other side  
13 of the courtroom from the jury box, and then I  
14 would intend to rest.

15 BY MR. BENSON:

16 I would just ask when the defendant is  
17 displayed to the jury at close range that  
18 there's no comment or any indication from  
19 counsel where to look, what to look at,  
20 anything like that.

21 BY MR. KING:

22 No, absolutely not. I intend to walk up  
23 there with him and --

24 BY THE COURT:

25 That's certainly well taken, yes.

1 BY MR. KING:

2 And I would ask it just be myself and my  
3 client to walk up there, to walk on one side  
4 or the other, come back and sit down and not  
5 say anything.

6 BY THE COURT:

7 And the purpose is to give the jury as  
8 close a look at the defendant as possible, is  
9 that right?

10 BY MR. KING:

11 Yes.

12 BY THE COURT:

13 All right. I have prepared a list of  
14 instructions here. And I don't know if you  
15 have any to tender, either side.

16 BY MR. KING:

17 I'm going to look at one of them with  
18 respect to -- it seems to me the pattern on  
19 alibi defense, at least the ones I'm familiar  
20 with, or somewhere in the instructions,  
21 reiterate to the jury that even though a  
22 defense such as alibi has been presented and  
23 evidence to that effect, that it does not in  
24 any way, shape or form shift the burden of  
25 proof.

1 BY THE COURT:

2 I think this instruction says that. But  
3 at the present time, why don't we give you  
4 each a copy of the whole panoply of  
5 instructions, and you can then when we're done  
6 with the evidence or at any time take a chance  
7 to look them over, make your objections,  
8 deletions, requests.

9 BY MR. KING:

10 Now, I've been informed by the State that  
11 -- and I don't know if this has changed since  
12 a half hour ago -- that they intend to present  
13 in rebuttal a records custodian of the  
14 telephone company with reference to telephone  
15 bills from my client's residence.

16 And if I understand it correctly, I  
17 respectfully submit that that is improper  
18 rebuttal. They are attempting to show the  
19 absence of any call from that residence to a  
20 Michigan number.

21 I would point out to the Court that the  
22 unrefuted testimony is any such phone call  
23 would have been an hour past, after the time  
24 of the offenses charged in Counts I through IV  
25 of the information of this case; therefore, it



1 is irrelevant and improper rebuttal.

2           Secondarily, I would point out to the  
3 Court that the defense did not elicit any  
4 testimony regarding a telephone conversation;  
5 that was elicited by the State itself.

6           And, finally, I would submit to this Court  
7 that if the State's argument is this is  
8 impeachment evidence of the testimony of  
9 Sheila Donald, this is collateral and  
10 extrinsic proof is not permitted to impeach on  
11 a collateral matter.

12           So for all these reasons, I respectfully  
13 move in limine to prohibit the State from  
14 eliciting that evidence in rebuttal if it  
15 remains their intent to do so.

16 BY MR. BENSON:

17           Well, the State would prefer to reserve  
18 their argument until defense counsel has  
19 rested their case.

20 BY THE COURT:

21           All right. You may bring in the jury.  
22

23           WHEREUPON THE JURY WAS BROUGHT INTO OPEN  
24 COURT AND THE FOLLOWING PROCEEDINGS WERE HELD  
25 IN THEIR PRESENCE AND JURY:

1 BY THE COURT:

2 Defense may proceed.

3 BY MR. KING:

4 Thank you, Your Honor. Your Honor, the  
5 defense would respectfully ask the Court to  
6 judicially notice certain data obtained as a  
7 result of the 1990 census of the population  
8 and housing conducted by the United States  
9 Bureau of Census.

10 I would cite as authority for this in re  
11 Roden v. State, 1968 143 Indiana Appellate,  
12 537 241 N.E.2D 800, Swain v. State, 1939 215  
13 Indiana 259, 18 N.E. 921, and several other  
14 cases if the Court would please I would share  
15 with it.

16 I would respectfully at this point have  
17 the record reflect that I'm tendering what's  
18 been marked for identification as Defendant's  
19 Exhibit 9, which is the print-out of a section  
20 of that data I would not tender to the Court  
21 and ask the Court to take judicial notice.

22 BY MR. BENSON:

23 No objection to that census report.

24 BY THE COURT:

25 All right, based upon that case law and

1 others I could mention, the Court will take  
2 judicial notice and admit into evidence what  
3 has been marked as Defendant's Exhibit Number  
4 9, which is entitled "1990 Census of  
5 Population and Housing" for the state of  
6 Indiana, city of Gary in Lake County.

7 Counsel, are you asking that this be  
8 published at this time or be available to the  
9 jury?

10 BY MR. KING:

11 I would ask that it be available,  
12 obviously, for counsel during summation, and  
13 further that it be remitted to the jury room  
14 during the course of their deliberations.

15 BY THE COURT:

16 Granted.

17 BY MR. KING:

18 At this point, the defense would move for  
19 the leave of Court to permit by way of  
20 demonstration an approach to the jury box by  
21 my client and myself without any comment so as  
22 to permit an opportunity for the jury to view  
23 my client at a closer distance than is  
24 permitted by the layout of the Court.  
25



1 BY THE COURT:

2 Under the procedure that we approved in a  
3 hearing outside the presence of the jury, that  
4 motion is granted.

5  
6 WHEREUPON DEFENSE COUNSEL AND THE  
7 DEFENDANT WALKED FROM THE OUTER FAR END OF THE  
8 JURY BOX TO THE OPPOSITE END.

9  
10 BY MR. KING:

11 Your Honor, the defense rests.

12 BY THE COURT:

13 Members of the jury, the defense has  
14 rested and at this point, counsel have asked  
15 me to hear some matters outside your presence,  
16 and we'll do so. We'll excuse you for a few  
17 minutes.

18 The jury is excused and admonished not to  
19 converse about the case.

20  
21 WHEREUPON THE JURY WAS EXCUSED FROM THE  
22 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE  
23 HELD OUTSIDE THEIR PRESENCE AND HEARING:

1 BY MR. BENSON:

2 Let me identify the other witness too.

3 BY THE COURT:

4 All right.

5 BY MR. BENSON:

6 We also intend to call Chandra Goodman,  
7 the girlfriend of the defendant. And those  
8 witnesses are going to be called to rebut the  
9 testimony of -- as counsel stated, but I  
10 disagree with him; it's not ancillary to this  
11 issue -- of Sheila Donald and Don Hopkins.  
12 And I want to show the Court in writing why  
13 we're doing this.

14 BY THE COURT:

15 All right.

16 BY MR. BENSON:

17 Judge, the testimony of Sheila Donald and  
18 Dan Hopkins: Sheila Donald testified, okay,  
19 that as to two things in particular that we're  
20 calling rebuttal witnesses, and the first one  
21 is that she saw her brother on the phone  
22 talking. Okay, Dan Hopkins testified that,  
23 one, the defendant never talked on the phone  
24 that he saw; okay, number two, that there was  
25 a phone call, and there might have been

1 another one, okay, a second call. Because he  
2 said that's when Sheila could have seen him on  
3 the phone.

4 BY THE COURT:

5 He testified there was an incoming call  
6 from Chandra.

7 BY MR. BENSON:

8 Well, that's the first call.

9 BY THE COURT:

10 Right.

11 BY MR. BENSON:

12 He said he answered it but the defendant  
13 didn't speak to Chandra Goodman.

14 BY THE COURT:

15 Right.

16 BY MR. BENSON:

17 The second call, or he says there might  
18 have been a second call, because I asked him,  
19 "Was Sheila in the room with you when you went  
20 to go get the defendant?" and he said, "Yes,  
21 she never left." And then I asked, "Well,  
22 based upon your observations, is it possible  
23 that she could have seen the defendant talking  
24 on the phone?" and his response was, "There  
25 might have been another call," because he said



1 she left the room two or three times, went to  
2 the bathroom, went to the other bedroom.

3 We are offering the testimony of the AT&T  
4 -- I'm sorry, the Indiana Bell keeper of the  
5 records and Chandra Goodman to show that there  
6 were no other calls and that Sheila Donald is  
7 lying, that she did not see her brother on the  
8 phone.

9 And that is imperative testimony to  
10 impeach that witness. Because if she's lying  
11 about that crucial point at a time so close  
12 when these robberies would have just finished,  
13 she's lying about something else, Judge.

14 BY THE COURT:

15 Well, what is it she said, that she saw  
16 him on the phone?

17 BY MR. BENSON:

18 "I saw him talking on the phone," and that  
19 is in the deposition also. In the deposition,  
20 she said, "I saw him call."

21 BY MR. KING:

22 Well, objection to the deposition.  
23 Counsel made no effort under any appropriate  
24 procedure to get that deposition or a portion  
25 thereof into the evidence.

1 BY MR. BENSON:

2 Judge, I asked her about it. When she  
3 said, "I saw him on the phone," I said, "Isn't  
4 it true that you previously said that you saw  
5 him call his girlfriend?" and she goes, "Well,  
6 I'm not sure, but he was on the phone." She  
7 was steadfast in saying, "I saw him on the  
8 phone."

9 And under this scenario with the keeper of  
10 the records from Indiana Bell and Chandra  
11 Goodman testifying, that will show that there  
12 was only one phone call. And Dan Hopkins  
13 testified there's no way that Sheila Donald  
14 could have seen him on the phone because she  
15 was in the bedroom the whole time during that  
16 call. But he did leave open the door that  
17 there might have been another call.

18 And we're proving that there wasn't any  
19 other call made in which the defendant was  
20 talking to his girlfriend other than that one.

21 BY MR. KING:

22 Your Honor --

23 BY MR. BENSON:

24 And that door is open now, and we're  
25 attempting to close it.

1 BY MR. KING:

2 Your Honor, they, first of all, they are  
3 the ones that elicited the testimony; this was  
4 not presented by the defense, number one.

5 BY THE COURT:

6 Is there some problem with that vis a vis  
7 rebuttal that it came out during cross-  
8 examination?

9 BY MR. KING:

10 Yes, I believe so.

11 BY THE COURT:

12 Why?

13 BY MR. KING:

14 In rebuttal, you are responding to  
15 evidence that was generated by the defense;  
16 they generated the evidence themselves at a  
17 time not related to any of the offenses  
18 charged.

19 BY THE COURT:

20 Well, what time was it then?

21 BY MR. KING:

22 After the return to the home which was  
23 described and unrefuted as some time after  
24 9:45.

25 BY THE COURT:

1                   So it doesn't have anything directly to do  
2                   with the alibi.

3           BY MR. KING:

4                   Exactly.

5           BY THE COURT:

6                   But it's part of the State's theory of the  
7                   case.

8           BY MR. KING:

9                   Well, Judge, we have heard theories in  
10                  this case which, you know, the fact that they  
11                  theorize something does not make it germane.  
12                  This is completely collateral.

13                  The other point, and I don't know if  
14                  counsel was intentionally being misleading  
15                  when he keeps pounding on the witness box and  
16                  saying, "There were no calls," that's not what  
17                  the evidence would be; there weren't any long  
18                  distance calls made from Gary, from the  
19                  residence in Gary out. There is going to be  
20                  no testimony as I understand it about local  
21                  calls. And it's just -- it's not rebuttal.

22                  Whether or not my client talked to his  
23                  girlfriend on the telephone is completely  
24                  collateral.

25           BY THE COURT:



Well, that depends on what was said. In some cases, I've had admissions on the telephone.

BY MR. KING:

I understand but, Judge, they're talking about rebuttal. I just rested. The defense has not in any way, shape or form, nor has the State in their cross-examination put on any evidence of the content of the conversation.

So, if the Court is asking, "Well, it depends on what was said," fine. No evidence has been presented in the defense case about the conversation or about, certainly, what was said.

So how is this rebuttal? If there was evidence presented, there was conversation here of what was said, maybe the State would have an argument. But they don't. That wasn't the case. The defense never put this on.

Now, if they chose, they could have in their case in chief presented evidence of a phone call; obviously I would have relevance objections at that point which could be considered.

1           But the point is rebuttal is limited to  
2           responding to evidence presented by the  
3           defense; we didn't present this evidence.  
4           Even if we had, it is collateral and extrinsic  
5           proof, and an impeachment of a collateral  
6           matter is not permitted under Indiana law.

7       BY THE COURT:

8           Forgetting about the collateral matter for  
9           a while, was it not Donald's testimony that  
10          she saw her brother talking on the telephone?

11       BY MR. BENSON:

12          She said she saw him and heard him talking  
13          to his girlfriend. His girlfriend.

14       BY THE COURT:

15          And if you are able to prove with your  
16          records that only one phone call took place,  
17          and your witness will say that she initiated  
18          the call I take it, and did or did not talk to  
19          the defendant --

20       BY MR. BENSON:

21          Well, she may say something different from  
22          Dan Hopkins also, which impeaches his  
23          testimony. I'm impeaching the testimony that  
24          was elicited during their time on the witness  
25          stand. It shows they're both lying about the

1 incident, Judge.

2 BY THE COURT:

3 But the purpose of rebuttal isn't  
4 impeachment, it's to rebut evidence presented  
5 by the defense.

6 BY MR. BENSON:

7 Correct.

8 BY THE COURT:

9 Now, are you saying that you should be  
10 entitled to get into the conversation held  
11 between Chandra and the defendant on rebuttal?

12 BY MR. BENSON:

13 I believe I should be allowed to because  
14 Dan Hopkins said that she never talked to him.

15 BY THE COURT:

16 That he knew of.

17 BY MR. BENSON:

18 Well, yeah, see, that's what we're  
19 guessing, that he knew of. But by introducing  
20 the keeper of the records, then we don't have  
21 to guess. The jury can sit here, Judge, and  
22 now speculate that, "Well, maybe there was  
23 another call that Sheila could have seen him  
24 talking on," but we know that's not true if  
25 I'm allowed to put on the evidence of the

1 phone records. It's an area that is now pure  
2 speculation.

3 How could I possibly -- there's no way --  
4 even counsel admitted he had relevancy  
5 objections if I had called Sheila Donald in my  
6 case in chief.

7 BY MR. KING:

8 No, I think the record will reveal I said  
9 I would challenge the relevance of it in the  
10 case in chief, but you could have at least  
11 attempted to do it then.

12 This is not rebuttal of anything the  
13 defense presented. Nothing. It rebuts  
14 nothing and is completely collateral to the  
15 issues in this case. Completely.

16 BY THE COURT:

17 Let's get on to the collateral business.  
18 If all of what you say is true, what  
19 difference does it make?

20 BY MR. BENSON:

21 Where someone is at -- it goes to the  
22 alibi, Judge. If these witnesses are lying  
23 about whether or not the defendant spoke to  
24 someone on the phone and who they were talking  
25 to -- they're trying to create an alibi by



1           their testimony, that, "He was talking to his  
2           girlfriend," and Sheila Donald says, "I saw  
3           him."

4           Now, we have proof -- Dan Hopkins says,  
5           "She didn't unless there was another phone  
6           call," -- and now we have proof to show there  
7           wasn't. And if we are not allowed to present  
8           that to the jury, now the jury is left with  
9           the impression thinking that this defendant  
10          was talking on the phone to someone at --  
11          what? -- thirty minutes after the crimes?

12  
13       BY THE COURT:

14               Well, is your rebuttal witness going to  
15               say that he was talking on the phone to her?

16       BY MR. BENSON:

17               Well, I believe she's going to.

18       BY THE COURT:

19               Well, what does that rebut? Then he was  
20               talking to her.

21       BY MR. BENSON:

22               I'm not calling her for what was said, and  
23               I probably could stay away from that part of  
24               the conversation. I'm calling her --

25       BY THE COURT:

1 But you say he was talking to her?

2 BY MR. BENSON:

3 That's what she's going to say.

4 BY THE COURT:

5 Well, what does that rebut?

6 BY MR. BENSON:

7 I'm not calling her for that purpose,  
8 Judge; I'm calling her for the purpose of the  
9 phone bill that shows it was only one call  
10 made to the residence that evening, and Sheila  
11 Donald could not have seen him talking on the  
12 phone like she has testified.

13 BY MR. KING:

14 You cannot use the phone bill from Chandra  
15 Goodman's phone; that is complete hearsay.  
16 She didn't generate that document. You don't  
17 have anybody here --

18 BY THE COURT:

19 He has somebody from the Bell system he  
20 said.

21 BY MR. KING:

22 He's got somebody here from Indiana Bell;  
23 you don't have anybody here from MCI, do you?  
24 If you don't --

25 BY THE COURT:

1 He has got Chandra.

2 BY MR. BENSON:

3 I certainly can ask her about that phone  
4 bill; if she has adopted it, paid it, it's  
5 fair game.

6 BY MR. KING:

7 No, it's not fair game.

8 BY MR. BENSON:

9 I can ask her if she made the call.

10 BY MR. KING:

11 But the point is, and the Court is asking  
12 -- he's the proponent of this evidence; he  
13 can't even answer the Court's question what it  
14 rebuts. He cannot even answer that question.

15 And what they are doing is attempting to  
16 -- you know, we have been focused on one issue  
17 throughout this case, one issue, the identity;  
18 that's where the alibi has relevance. It's  
19 relevant on that issue. And the times of the  
20 offenses in question predate the unrefuted  
21 testimony as to the time of the arrival at the  
22 home. So what he's talking about in any event  
23 happens after the offenses.

24 BY THE COURT:

25 It must or you wouldn't want to put it on

1           because you would be establishing his alibi.

2       BY MR. BENSON:

3           Judge, this Court is going to give the  
4       jury instruction on the credibility of the  
5       witnesses, yet now the State isn't having the  
6       opportunity to fulfill their burden of helping  
7       the jury determine the credibility of the  
8       witnesses because we're being prohibited from  
9       offering evidence that will show that Sheila  
10      Donald is lying.

11      BY MR. KING:

12           Well, I mean a lot of times lawyers on  
13      either side get prohibited from offering  
14      things they want to offer. I mean that  
15      doesn't relate to anything; it's not germane  
16      to anything.

17           My point is this is not rebuttal. This is  
18      not rebuttal at all; it's not even close. And  
19      he's contending, "Well, we're going to attack  
20      the credibility of Hopkins vis a vis Donald,"  
21      he's got -- and you noted my objections at the  
22      time -- well, he does; he has Hopkins saying  
23      one thing.

24           You know, he can make that argument on  
25      what he's got through cross-examination about



1 the difference between Sheila's recollection  
2 and Dan Hopkin's recollection. This does  
3 nothing to aid, if that's their goal in this  
4 -- again, they're the proponent of the  
5 evidence.

6 It's their obligation to establish to this  
7 Court some basis for the admission of this  
8 evidence as rebuttal evidence, and to this  
9 minute they have not articulated a basis for  
10 either its relevance, its nature as rebuttal  
11 or, finally, they have never addressed the  
12 collateral aspect of this.

13 And this is what that evidence is. This  
14 is extrinsic proof of impeachment, which is  
15 not permitted where the matter is collateral.

16 BY THE COURT:

17 Well, you're saying it doesn't harm you in  
18 any way so what difference would it make?

19 BY MR. KING:

20 Because I'm objecting. Because I'm  
21 objecting.

22 BY THE COURT:

23 What harm would it do the defendant?

24 BY MR. KING:

25 Here's what the harm does: The defense

1 from the time of selecting this jury has done  
2 their level best to have a focus on what the  
3 issue in this case is, focus on the issue of  
4 this case. This is the diversion from that  
5 focus. That is potential harm. And potential  
6 harm is never a basis for the propriety of an  
7 objection.

8 They are the proponent. They have the  
9 burden of establishing its admissibility; it's  
10 not the other way around. And the objections  
11 I have noted, beginning with my comments  
12 before the jury was even brought in, the State  
13 has not met their burden as proponent of this  
14 evidence and I respectfully ask that the Court  
15 grant our Motion in Limine to prohibit the  
16 introduction of this evidence for all the  
17 reasons noted.

18 And they have yet -- yet to show that  
19 counsel for the defense is in error on any of  
20 these objections; they cannot articulate their  
21 basis for seeking the admission of this  
22 evidence insofar as it fits Indiana case law.

23 BY MR. BENSON:

24 Judge --

25 BY MR. KING:

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*Anna N. Antone*  
CLERK LAKE SUPERIOR COURT

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1           Their simply saying in their view or in  
2           the Court's view or whatever, it doesn't harm  
3           the defendant just doesn't address the issue.  
4           They have to show that this is, in fact,  
5           admissible evidence, and they haven't done it.

6       BY MR. BENSON:

7           Judge, it directly reflects the testimony  
8           of Dan Hopkins when he says Sheila Donald  
9           could have seen the defendant on the phone  
10          talking to his girlfriend when another call  
11          came in.

12  
13       BY THE COURT:

14          Well, I've never had in all the years I've  
15          been here somebody rebutted on what could have  
16          happened. I've never had that experience.

17       BY MR. BENSON:

18          Well, but Sheila Donald testified she did  
19          see, not that she could have seen, Sheila  
20          Donald then testifies, "I did see him on the  
21          phone talking to his girlfriend." And we want  
22          to rebut that.

23       BY THE COURT:

24          And then your rebuttal witness would  
25          corroborate that by saying, "I did talk to him

1           on the telephone."

2       BY MR. BENSON:

3           No. She's going to say there was one  
4           phone call. Someone is lying out of these  
5           three people, and that's what we want to show.

6       BY MR. KING:

7           You only have two people at this point.  
8           Again, see, he's --

9       BY THE COURT:

10           You're saying that Chandra may be the one  
11           that's lying who has not even been presented  
12           yet too.

13       BY MR. BENSON:

14           Well, I believe she's going to testify --  
15           she may be mistaken. I don't believe she's  
16           lying because she has seen the phone bill. It  
17           was defense counsel's witness he chose not to  
18           call. So she has seen the phone bill; this  
19           isn't any big surprise. She's going to know  
20           what the phone bill says; I'm sure she has  
21           looked at it. Defense counsel has tendered  
22           that to us.

23       BY THE COURT:

24           Well, the call was made from her to this  
25           number?



1 BY MR. BENSON:

2 Yes.

3 BY THE COURT:

4 And the number of minutes on the bill is  
5 how many?

6 BY MR. BENSON:

7 One, as if the defendant wasn't there.

8 BY THE COURT:

9 One minute could be anything from one down  
10 to zero.

11 BY MR. BENSON:

12 You're charged one minute no matter what;  
13 that's what the testimony will be.

14 BY MR. KING:

15 Again, hey, how are we rebutting anything?

16 BY THE COURT:

17 We don't even know from that if she talked  
18 to anyone.

19 BY MR. BENSON:

20 It rebuts their direct testimony about who  
21 saw who on the phone. And I don't care  
22 whether that comes out in direct or cross;  
23 that's not the criteria. Their witness said  
24 it. How else do you ever impeach the  
25 testimony of someone who is lying on cross-

1 exam? You know, if she had got up there and  
2 said, "The sun sets in the east," I can't call  
3 someone to verify that?

4 BY THE COURT:

5 But I'm not sure this does that. All of  
6 it could be true and the phone bills shows the  
7 call made from that number to this one.

8 BY MR. BENSON:

9 It can't be true because of what Dan  
10 Hopkins said.

11 BY MR. KING:

12 But he has already got that argument. He  
13 can already argue he's got two different bits  
14 of testimony on, again, a completely  
15 collateral issue. That's the point.

16 You know, he wants to take up jury time  
17 not talking about anything close to the issue  
18 in this case, not talking about a time germane  
19 to the elements of the offenses charged in  
20 this case.

21 Hey, he's the proponent of this evidence.  
22 He has yet to articulate any basis for the  
23 admission of this testimony in the State's  
24 rebuttal case of any of this.

25 BY MR. BENSON:

1                   The witness -- Sheila Donald and Dan  
2                   Hopkins is lying, and that's what this  
3                   testimony will show.

4           BY MR. KING:

5                   Well, no.

6           BY MR. BENSON:

7                   And I agree, counsel shouldn't want that  
8                   in. But the State believes it's relevant and  
9                   it's proper rebuttal.

10          BY MR. KING:

11                   Well, that's counsel's view of it.

12  
13          BY MR. BENSON:

14                   That's part of this entire alibi --

15          BY MR. KING:

16                   He's making his closing argument.

17          BY MR. BENSON:

18                   -- that they went to a car dealership, what  
19                   time they got home, that everyone saw  
20                   everybody else, and everyone is telling a  
21                   different story.

22          BY MR. KING:

23                   Well, Judge, he's got an excellent closing  
24                   argument I'm sure we'll all be thrilled to  
25                   hear, but that doesn't permit them to, under

1 the guise of rebuttal, present this collateral  
2 irrelevant evidence in an effort to simply  
3 muddy the waters over what the issue in this  
4 case is. And that's exactly what he's trying  
5 to do.

6 Now, he wants to -- you know, he's so  
7 convinced that Mr. Hopkins and Ms. Donald are  
8 lying. Let him bring perjury charges against  
9 them and litigate it that way. The truth of  
10 the matter is he couldn't even do that because  
11 the testimony in respect to the phone call  
12 isn't material to anything in this case.

13 BY MR. BENSON:

14 Whether or not one of the witnesses  
15 observes a crucial fact is not relevant,  
16 Judge? Places the defendant talking on the  
17 phone?

18 BY MR. KING:

19 Because Mr. Benson says somehow in his  
20 mind this is a crucial fact doesn't make it  
21 so. It is not a crucial fact to this case.

22 BY THE COURT:

23 What difference would it make, Mr. Benson,  
24 all things being equal, if this guy got on the  
25 phone with his girlfriend at that particular



1           time or not? He still may or may not have  
2           committed this crime.

3       BY MR. BENSON:

4           It shows his alibi witnesses are lying.

5       BY MR. KING:

6           Your Honor --

7       BY MR. BENSON:

8           And they may have lied about something  
9           else. He may have not went with them; no one  
10          has IDd this defendant as being at the car  
11          dealership.

12  
13       BY MR. KING:

14           Yes, isn't that appropriate? This is  
15           ludicrous; this is ridiculous. He is not  
16           entitled to present this; he hasn't yet  
17           answered one of your questions. He has not  
18           answered one of your questions, Judge.

19       BY MR. BENSON:

20           I don't know who defense counsel has been  
21           listening to, Judge, but I told you that it is  
22           to rebut what Dan Hopkins said and what Sheila  
23           Donald said. She said she observed him  
24           talking to his girlfriend.

25           When you combine the testimony of Chandra

1 Goodman, the Indiana Bell keeper of the  
2 records and Dan Hopkins, she has proved that  
3 she is lying; and it rebuts her testimony that  
4 she saw her brother talking on the phone.

5 That's what it rebuts. I don't know how  
6 much more articulate defense counsel wants me  
7 to be so he can understand it.

8 BY MR. KING:

9 Put it at a time relevant to the case for  
10 heavens sake.

11 BY THE COURT:

12 What if she saw him talking on the phone  
13 to somebody in Gary?

14 BY MR. BENSON:

15 She didn't say that; she said I saw him  
16 and I heard him talking to his girlfriend.  
17 That's what she said, and we can go back and  
18 look at that because I specifically wrote that  
19 down. She said it in her deposition too. I  
20 assumed that was going to be the alibi, but as  
21 it turned out now, it's a one-minute phone  
22 conversation that I want to get into.

23 BY MR. KING:

24 At a time after any of these incidents --

25 BY THE COURT:

1                   The only thing he brought up is does it  
2                   impeach your witnesses?

3           BY MR. KING:

4                   No.

5           BY THE COURT:

6                   Why not?

7           BY MR. KING:

8                   What he has already in is the two  
9                   witnesses different recollections; he has  
10                  already accomplished an impeachment. He has  
11                  already accomplished an impeachment between  
12                  the two. That is in the record; that is in  
13                  the evidence.

14                  Now, I don't agree on the significance of  
15                  it, but that's there. Now, even by what he  
16                  has said --

17          BY THE COURT:

18                  Except that you've got Hopkins saying  
19                  there may have been a second call, right? He  
20                  doesn't know.

21          BY MR. KING:

22                  Exactly. From who? All he said is maybe  
23                  the phone rang again because of the call  
24                  waiting; it doesn't mean a long distance call,  
25                  it could be a local call.

1 But, again, Judge, it's at a time that is  
2 not relevant to anything. That's why the rule  
3 exists. He's saying that's proving they're a  
4 liar. If it is germane to the issue in the  
5 case, then it is not collateral.

6 This is the old example, you know, of an  
7 eye witness offhandedly saying, "Well, this  
8 one car that's not particularly relevant to  
9 anything was red," and then there's some  
10 extrinsic proof, "Well, the car was blue."  
11 The color of the car doesn't matter in the  
12 case. You cannot bring in extrinsic proof to  
13 prove the car was blue as opposed to red; it's  
14 elementary law.

15 And that's exactly what this is, and the  
16 danger -- the danger is one of the things  
17 where it looks linked to the conditions of the  
18 time and all this is confusion of the issues,  
19 misleading of the jury. And that's exactly  
20 what this evidence is designed by the State to  
21 do. They don't want to deal with the issues;  
22 they want to go off on this tangent at a time  
23 that is not relevant to the issues are in this  
24 case. It is their burden to establish its  
25 admissibility; they have failed.



1                   And on all the grounds previously noted, I  
2                   respectfully ask this Court to grant my Motion  
3                   in Limine and prohibit the State from doing  
4                   this.

5                   BY MR. BENSON:

6                   But doing that, the Court has ruled that  
7                   credibility is not an issue. That's what they  
8                   do if they grant the Motion in Limine, because  
9                   it goes to this witness's ability to  
10                  recollect.

11                  Maybe they're wrong about the night they  
12                  went to the car dealership. Obviously they're  
13                  wrong about these phone conversations, and if  
14                  not, it's not a mistake, then it's a lie and  
15                  it's a credibility matter, and that's  
16                  relevant, Judge.

17                  BY THE COURT:

18                  Well, on the issue of the car dealer, they  
19                  did present some corroboration, not as to the  
20                  defendant but as to Hopkins and Sheila Donald.

21                  Well, it seems to me -- it's an  
22                  interesting question, but you must remember,  
23                  we're not talking about just anything here but  
24                  rebuttal; and rebuttal has got rules, very  
25                  strict rules. If you have evidence you

1 present. If there is something that the  
2 defense develops that you know very specially  
3 and very limitedly, you can do that; and  
4 that's what we're talking about.

5 BY MR. BENSON:

6 I don't know how I could have done this in  
7 the case in chief, Judge. Maybe it's my lack  
8 of ignorance (sic), but I don't think that  
9 would have been available.

10 BY THE COURT:

11 No, it wouldn't; you're right. I don't  
12 think you could have done this in your case in  
13 chief; you could have offered it but I don't  
14 think you could have done it. It would have  
15 been premature.

16 BY MR. KING:

17 But he's the one that went into the phone  
18 calls.

19 BY THE COURT:

20 Unless you have something in the  
21 conversation with Chandra Goodman and the  
22 defendant that you could use against the  
23 defendant.

24 BY MR. KING:

25 Which he cannot do.

1 BY MR. BENSON:

2 That was argued against.

3 BY THE COURT:

4 Well, you could if you have something. I  
5 mean there are admissions made by individuals,  
6 and if it's done, they're admissible. But  
7 that's not what we're talking about here.

8 So on balance, I believe as I have heard  
9 all the evidence and weighed it, I agree with  
10 the defense that it not be presented; I don't  
11 think it qualifies under the very strict rules  
12 of rebuttal that Indiana requires. And I  
13 think I would be found in error to admit it.

14 BY MR. BENSON:

15 Okay, then, Judge, we have three other  
16 rebuttal witnesses to deal with at this time.

17 BY THE COURT:

18 Let's hear about that.

19 BY MR. BENSON:

20 We want to introduce Cherie Cunningham and  
21 Ron Fleming. Cherie Cunningham -- there has  
22 been some talk as well as --

23 BY MR. KING:

24 Who is Cherie Cunningham?

25 BY MR. BENSON:

1                   She's a victim-witness assistant. If I  
2                   could explain: In these State's exhibits, the  
3                   line-ups that were shown to the car  
4                   dealerships, Defendant's Exhibits 7 and 8 and  
5                   State's Exhibit 17, one of the pictures  
6                   appears of Lavelle Thompson, a name that was  
7                   injected by defense counsel through I believe  
8                   Bruce Outlaw.

9                   BY THE COURT:

10                  The deceased person?

11                  BY MR. BENSON:

12                  A person who supposedly was --

13                  BY MR. KING:

14                  Your Honor, could we correct the record  
15                  right now? The State introduced the name of  
16                  Lavelle Thompson in these proceedings in  
17                  direct examination or redirect examination of  
18                  Bruce Outlaw.

19                  And with all due respect to counsel, I  
20                  would ask if there's any question here, that  
21                  record be reviewed. He's the one that brought  
22                  it up, not the defense.

23                  BY THE COURT:

24                  You did talk about it.

25                  BY MR. KING:



1                   After the State injected it. And I just  
2                   wanted to correct that portion.

3           BY MR. BENSON:

4                   I'm not saying it's true but I don't  
5                   contest it.

6           BY THE COURT:

7                   All right. I'm not sure how dispositive  
8                   that is of anything, but all right.

9           BY MR. BENSON:

10                   When Ms. Donald testified, she said that  
11                   she felt there was no investigation done in  
12                   this matter and that no one tried to do  
13                   anything to find out if the defendant's alibi  
14                   was true. And we want to call Ron Fleming as  
15                   well as Cherie Cunningham to show that, in  
16                   fact, something was done.

17                   Okay, and that picture of Lavelle  
18                   Thompson, a name given to us and brought up in  
19                   the State's case in chief, but I don't think  
20                   we could have went any further with it because  
21                   we didn't have the car dealership guys at that  
22                   time.

23                   And Cherie Cunningham obtained a picture  
24                   of this man given to us by defense counsel,  
25                   and in good faith, we had that picture cut, we

1 had it redacted, we had it put into this line-  
2 up and this line-up was shown to the car  
3 dealers as well as Ms. Belinsky in an effort  
4 to attempt to either confer or deny the  
5 identification of this individual and to show  
6 that an investigation was conducted into this  
7 matter.

8 And for the witness to sit up there and  
9 blanketly say that, "Well, no one tried to do  
10 anything to check this out," leaves a very bad  
11 impression with the jury that the State sat on  
12 its hands and did garbage. And that's simply  
13 not true.

14 BY MR. KING:

15 You have the unrefuted testimony of both  
16 gentlemen from the car dealerships that -- I  
17 believe both of them said a week ago Tuesday  
18 they met with Ron Fleming and looked at those  
19 pictures. So that evidence is already in  
20 there.

21 Now, this Lavelle Thompson business is  
22 absolutely not rebuttal of anything. They  
23 injected his name into the proceedings -- and  
24 a review of the record will verify what I'm  
25 telling you. They injected the name in the

proceedings. Now, to come out and say, "This is who this guy's picture is," doesn't, again, rebut anything that has been put on by the defense. Nothing. And unless he's going to say that these car guys were wrong, that it was another time or an additional time -- but it's unrefuted, they said, "A week ago Tuesday we looked at these things and the gentleman from the State is the one that brought them up to us."

So, again -- who is the third witness?

BY THE COURT:

I was wondering that too. You mentioned three additional witnesses, Cunningham, Fleming and?

BY MR. BENSON:

Kim Belinsky. We would like to recall her to show the Court and the ladies and the gentlemen of the jury that -- and I'm sure that they're going to refer to it in closing arguments there was this Lavelle Thompson guy running around out there. She viewed that line-up after this case had been filed and everything else, after we get all this work through Ron Fleming and Cherie Cunningham, and

1 to relieve any doubt in her mind as to who the  
2 perpetrator was.

3 And this is being brought up now because  
4 they want to contend -- Ms. Donald wants to  
5 contend that nothing was done. She made that  
6 statement several times on cross-exam.  
7 Certainly, she has left the jury with the  
8 impression that, "Hey, they had a guy, they  
9 thought they had him and they're not going to  
10 do a damn thing to do anything else," and  
11 that's not the case.

12 BY THE COURT:

13 But didn't she admit that she didn't know  
14 what the prosecutor's office had done, she was  
15 talking about the police.

16 BY MR. BENSON:

17 She didn't, and we'd like to show that.  
18 Our efforts in this case were not challenged  
19 until she took the stand about us never  
20 investigating the alibi.

21 BY MR. KING:

22 She was talking about the Gary police;  
23 that's clear. I mean you asked her about the  
24 State, and she said, "I don't know what, if  
25 anything, you did." And, again, they're the



1           ones -- they generated this. They bring it in  
2           about Lavelle, you know. Again, if the  
3           defense put this in, yes; but they did it. I  
4           don't know why, but they did it.

5           BY THE COURT:

6                   Well, because you raised the issue of the  
7           alleged robberies to Tisa Johnson, Christina  
8           Cullum, Rhonda Williams, the Bernard Jiminez  
9           matter and Sonya and Mary, that there were a  
10          series of robberies that were committed in  
11          this area at that particular time, and I think  
12          it's a simple issue to your defense.

13          BY MR. KING:

14                   So how does this rebut anything there?

15          BY THE COURT:

16                   Now, after that, I believe the name of a  
17          Lavelle Thompson came in.

18          BY MR. KING:

19                   From the State; they injected it.

20          BY THE COURT:

21                   Now, what was it that you asked about  
22          Lavelle Thompson?

23          BY MR. KING:

24                   What I asked about Lavelle Thompson is how  
25          Outlaw learned he died at 4330 Massachusetts,

1 after they injected the name Lavelle Thompson.

2 BY THE COURT:

3 Well, my notes indicate that on redirect  
4 the issue of the name came up, the State's  
5 redirect, as a name given by defense counsel  
6 as a possible suspect and that he's dead. So  
7 he talked to Outlaw on the stand; Outlaw  
8 testified as to this Thompson on redirect, and  
9 then you questioned about Lavelle Thompson on  
10 recross.

11 BY MR. KING:

12 Yes, after they had brought it up. The  
13 final point I would raise is I do not believe  
14 that they have listed any witness who can  
15 authenticate the picture as being of Lavelle  
16 Thompson. I have heard no evidence whatsoever  
17 that they are able to authenticate that. I  
18 believe that the answer of any of those people  
19 as to the identity of that person would be  
20 based solely upon hearsay and would be  
21 inadmissible for that reason.

22 I really believe, Your Honor, if you look  
23 at the state of affairs in this case that  
24 they're the ones, once again, that have  
25 generated this and now they're trying to set

up a straw man to knock him down. Whatever their tactics, it does not justify this as rebuttal evidence; it just doesn't.

And, again, I don't think that what they're trying to accomplish is what he said; I don't think they can do it over a hearsay objection in any event.

Now, I don't mind Mr. Fleming if there's anything in dispute from what the car salesmen said about what they know about Mr. Fleming's efforts that's any different, you know, other than what they said, "A week ago Tuesday," you know; that's a different matter. If Mr. Fleming went out there on more occasions or whatever like that, that's a different story. But everything he wants here, it's not rebuttal.

BY THE COURT:

Okay, what would Cunningham testify to?

BY MR. BENSON:

Cherie Cunningham will testify that she requested a picture of Lavelle Thompson from his mother, his mother or sister, and that the picture in that exhibit is the picture she received.

1 BY MR. KING:

2 Hearsay. Cherie Cunningham has no basis,  
3 is not competent, and cannot identify that as  
4 a picture of Lavelle Thompson. Cannot.

5 BY MR. BENSON:

6 The testimony I just reiterated is not  
7 hearsay, Judge. And that picture is already  
8 in evidence, so it can't be said it's  
9 irrelevant.

10 BY THE COURT:

11 But as to who it is, wouldn't she have to  
12 base it on what somebody told her?

13 BY MR. BENSON:

14 She'll testify what she said. I said I'll  
15 ask her, "Did you attempt to obtain a picture  
16 of Lavelle Thompson?" Her answer will be,  
17 "Yes." "What did you do?" "I called the  
18 mom." "Did you get any pictures from the  
19 mom?"

20 BY MR. KING:

21 Declarative answer; hearsay.

22 BY MR. BENSON:

23 Tendering of pictures is not a declarative  
24 act.

25 BY MR. KING:

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*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

VANES 001428



1                   It is a declarative act.

2       BY MR. BENSON:

3                   It's not.

4       BY MR. KING:

5                   An offer to prove the truth of the matter  
6                   asserted, i.e., this is a picture of Lavelle  
7                   Thompson.

8       BY MR. BENSON:

9                   It's a response to a command; it's not  
10                  hearsay.

11       BY MR. KING:

12                  Well, counsel ought to research hearsay.  
13                  That is a declarative act. It further  
14                  violates this defendant's right to confront.

15       BY THE COURT:

16                  Confront who?

17       BY MR. KING:

18                  Confront the declarant, the only one who's  
19                  not a witness in this case that says that is a  
20                  picture.

21       BY MR. BENSON:

22                  It goes to the weight of that testimony.

23       BY MR. KING:

24                  It does not. I'm talking relevancy, I'm  
25                  talking competency, we're talking hearsay,

1 we're talking confrontation, none of which  
2 they meet with what they're offering.

3 BY MR. BENSON:

4 Cherie Cunningham could further testify --  
5 even if Judge thinks defense counsel's  
6 argument is good, which I don't think it is a  
7 valid argument -- Cherie Cunningham will  
8 testify that she looked at the coroner's  
9 photos for Lavelle Thompson and that's the  
10 same person.

11 BY MR. KING:

12 Again, to identify it to a name would be  
13 an out-of-court assertion.

14 BY THE COURT:

15 Don't we do that all the time with  
16 photographs?

17 BY MR. KING:

18 We might. I'm objecting to it here. I've  
19 yet to hear anybody say that this isn't  
20 hearsay.

21 BY THE COURT:

22 What did the defense do in this case to  
23 indicate that Lavelle Thompson's picture  
24 wasn't in these photographs? Did they in some  
25 way generate the belief that Thompson's

1 picture wasn't included in here?

2 BY MR. BENSON:

3 Well, they talked about how this guy was  
4 killed, shot in the back of the head with a 9  
5 millimeter in a crack house on 4300  
6 Massachusetts. We just want to bring up the  
7 fact that this guy isn't a suspect because  
8 nobody picked him out. Kim Belinsky looked at  
9 it and said, "No, that's not him," in a proper  
10 line-up form.

11 BY MR. KING:

12 Judge, they brought his name into the  
13 proceedings, not me; they did it. They did  
14 it; having done it, I asked Outlaw if he knew  
15 that he had been killed -- nothing about a 9  
16 millimeter -- where his body was found, 4340  
17 Massachusetts. And then asking about the dope  
18 house, that was stricken on motion by the  
19 State. So that's what I did after he injected  
20 the name. This is not rebuttal of anything.

21 BY MR. BENSON:

22 It goes to rebut the testimony in addition  
23 of Sheila Donald.

24 BY MR. KING:

25 What this is is trying to create an

1 artificial basis to bring Ms. Belinsky back up  
2 here under the false notion that it's  
3 rebuttal. It's not. That's what they're  
4 trying to do here, Your Honor; it is not  
5 rebuttal.

6 BY MR. BENSON:

7 If you take that argument, Judge, then  
8 defense counsel's witnesses can say anything  
9 on cross-exam about the manner in which the  
10 State conducted the case, their lack of  
11 effort, and we don't have a chance to show  
12 that, in fact --

13 BY MR. KING:

14 To reiterate, if they want to put Mr.  
15 Fleming on to say anything other than --  
16 anything that he did in addition to what the  
17 car salesmen said he did, which is not  
18 disputed by the defense, I'm happy to listen.  
19 And if that's what he's going to say, then I  
20 have a different position. I've yet to hear  
21 the State say anything about that.

22 BY MR. BENSON:

23 That's not why Fleming would be called.  
24 How do we rebut the fact that Sheila Donald  
25 made the statement that she thinks nobody did



1 anything.

2 BY MR. KING:

3 Read the record. She specifically limited  
4 that statement, certainly during cross by the  
5 State, to the Gary Police Department. And,  
6 quite frankly, you couldn't possibly rebut  
7 that, because that is true; the Gary Police  
8 Department didn't do a thing.

9 BY THE COURT:

10 What were the circumstances then of Kim  
11 Belinsky being shown the photograph supposedly  
12 of this Thompson?

13 BY MR. BENSON:

14 On defense counsel's persistence, as this  
15 person is a possible suspect, by sheer  
16 accident, we found out that a person had been  
17 murdered and that he was in the coroner's  
18 office, pictures of him were.

19 We obtained an address, which I think  
20 defense counsel had previously given to us,  
21 but Cherie Cunningham contacted the mother and  
22 got a picture of him so we could put it in a  
23 line-up, because if that information had come  
24 in -- and in all likelihood it would have  
25 somehow -- that door would have been opened.

1 Defense counsel would have stood up in closing  
2 and said, "Hey," you know, "look at this guy,  
3 Lavelle Thompson. He looks like my guy, he  
4 looks like my client." If counsel is  
5 introducing the census to show possible  
6 misidentification, surely he would have  
7 attempted to introduce the picture of a person  
8 who lived in that immediate area to show the  
9 confusion.

10 BY MR. KING:

11 Judge, I will state for the record I have  
12 absolutely no intent whatsoever to argue, to  
13 mention the name of Lavelle Thompson at any  
14 point in closing arguments -- at any point in  
15 closing arguments or, you know, describe him  
16 just without using a name. I'm not going into  
17 that.

18 I am not going to take the position that a  
19 particular other person rather than my client  
20 committed these acts. I'm not going to do it.  
21 Frankly, even if I were, they have yet to  
22 articulate this is rebuttal or get around  
23 hearsay or the other objections made. But  
24 just so that we can conserve some time here,  
25 that is not an argument I'm going to make to

1           this jury. It is not, even though they  
2           brought it into the proceedings.

3       BY MR. BENSON:

4           That's because defense counsel already got  
5           in the comment about "crack house and a guy  
6           being shot in the back of the head with a 9  
7           millimeter."

8       BY MR. KING:

9           You're the one that brought out the guy's  
10          name; then we asked when he was found dead.  
11          This 9 millimeter business, I don't know where  
12          you're coming up with that from because I, you  
13          know, I have no idea what caliber weapon was  
14          used to kill Mr. Thompson. And the address  
15          and then the reference to a dope house, which  
16          the Court struck from the record -- that was  
17          stricken from the record and the jury  
18          admonished.

19       BY THE COURT:

20           After the issue of his name came up in the  
21          State's case in chief, could the State have  
22          recalled Belinsky and put that picture in  
23          through a police officer and then say, "Have  
24          you had an opportunity to look at this  
25          individual and, if so, when?" you know, when

1 she was given that opportunity.

2 BY MR. BENSON:

3 We don't base our right to recall Kim  
4 Belinsky solely upon the comments of Bruce  
5 Outlaw; we base it upon that, tied with the  
6 statement of Sheila Donald saying that, "You  
7 guys didn't do anything to try and find out  
8 the alibi in this case."

9 BY MR. KING:

10 He keeps ignoring what the testimony was;  
11 he keeps misrepresenting what the testimony  
12 was.

13 BY THE COURT:

14 Well, I'm not in doubt at all in this case  
15 after listening to the evidence that Fleming  
16 went around to these car dealers with these  
17 photographs; they have said that, and I don't  
18 know how he could rebut what has already been  
19 said. The defense has not challenged the fact  
20 that -- the defense witness Moos here  
21 yesterday said, "He came around with these  
22 photos and he showed them to me."

23 BY MR. KING:

24 So did Mr. Sisson.

25 BY MR. BENSON:



1 Well, there's testimony that he went to  
2 two other people too. But, see, now the jury  
3 doesn't know how much investigation we've  
4 done. But Sheila Donald made that comment.

5 BY THE COURT:

6 They know you did something because they  
7 know you took these photographs around and  
8 offered them to the defense witnesses.

9 BY MR. BENSON:

10 If she had never made that comment, Judge,  
11 we wouldn't be sitting here right now. But  
12 she said she was under the impression --

13 BY MR. KING:

14 She said Outlaw --

15 BY THE COURT:

16 One at a time.

17 BY MR. BENSON:

18 -- that the Gary Police Department did  
19 nothing, but she didn't feel anybody was doing  
20 something. She said specifically the Gary  
21 Police Department, and I asked her if she knew  
22 of anything else that was being done; she  
23 said, "No."

24 BY THE COURT:

25 You asked her why she didn't tell Outlaw

1           about the alibi, and she said Outlaw was not  
2           doing anything to cooperate, he said parts of  
3           this investigation were confidential, he  
4           couldn't discuss them with her and he wasn't  
5           acting on anything that she was saying anyway  
6           so she didn't do it.

7           BY MR. BENSON:

8                     Well, and upon more detail, I asked her if  
9           she knew if our office was doing anything and  
10          she said, "No."

11          BY THE COURT:

12                     She didn't know.

13          BY MR. BENSON:

14                     She didn't know.

15          BY MR. KING:

16                     She didn't say you weren't; she said she  
17          didn't know. And then it has been presented,  
18          without challenge, that, in fact, your office  
19          did.

20          BY MR. BENSON:

21                     Well, I don't think the full extent of  
22          what we did was brought out. And but for  
23          Sheila Donald's comment, we wouldn't need to  
24          clear that up.

25          BY MR. KING:

1 But her comment is, "I don't know what you  
2 did," and she didn't know what you did. And  
3 two other witnesses have been presented by the  
4 defense who established what you did.

5 BY THE COURT:

6 Now, the one thing that in my mind  
7 certainly hasn't come out is that Belinsky may  
8 have been shown a picture of this person that  
9 we've talked about during the trial, no matter  
10 how his name came up.

11 BY MR. KING:

12 I understand, but that is not rebuttal of  
13 anything; that's not rebutting anything.

14 BY THE COURT:

15 Well, isn't your defense that someone else  
16 may have committed this crime?

17 BY MR. KING:

18 Someone else, not this other person.

19 Someone else.

20 BY THE COURT:

21 Well, that's arguable, but this is one of  
22 the someones that was talked about.

23 BY MR. KING:

24 Well, Judge, they've got in a picture. I  
25 mean there's six people at a line-up; they've

1 got in the testimony for looking at all these  
2 other pictures. I mean for heaven's sake.

3 BY THE COURT:

4 We don't know who all those other pictures  
5 were of.

6 BY MR. KING:

7 I understand. And we don't know that this  
8 is going to be through any competent evidence  
9 that this is a picture of Lavelle Thompson.  
10 We don't know; they have not yet offered to  
11 this Court a proffer showing they have anybody  
12 that can establish the identity of that person  
13 in the picture without relying upon hearsay.

14 BY THE COURT:

15 How about looking at the name on a death  
16 certificate? That's an indicia of  
17 reliability.

18 BY MR. KING:

19 The death certificate itself though would  
20 be hearsay unless by certification or  
21 otherwise they admit it. You heard how  
22 they're planning to do this. It's hearsay.

23 BY THE COURT:

24 Well, there's two ways: Number one, she  
25 requested that the family supply a photograph;



1 she got a photograph. And, secondly, Benson  
2 says that Cherie Cunningham could testify that  
3 she looked at documents at the coroner's  
4 office and felt that this was the same person.

5 BY MR. KING:

6 Hearsay.

7 BY THE COURT:

8 Why are coroner's records hearsay? I mean  
9 doesn't a death certificate have some indicia  
10 of reliability?

11 BY MR. KING:

12 Not in and of itself. They can certify;  
13 he could certify. That's how you get around  
14 hearsay; that's how you do it, not just  
15 because it has the coroner's name on it.

16 We're losing focus of what the issue is  
17 here. This is not rebutting anything. Nobody  
18 said -- they're trying to say -- their guise  
19 here is, "Ms. Donald said we didn't do  
20 anything." No, she didn't. She said, "I  
21 don't know. All I know is Outlaw." And she's  
22 absolutely correct; they can't rebut that.  
23 She doesn't know if they did.

24 Then we have, in the defense case for  
25 heaven's sake, evidence of what they did.

1 Now, yes, nothing was presented that Ms.  
2 Belinsky was shown these photos, but the  
3 probative value of one other person being  
4 shown the same photo arrays in terms of  
5 saying, "Here's what the State did," simply  
6 does not make this admissible evidence here  
7 since my witnesses in my case have not  
8 attacked the prosecuting attorney's office in  
9 terms of what they did or did not do with  
10 regard to the notice of alibi given. It just  
11 isn't rebuttal of anything we presented; it  
12 simply is not. And, again, it's improper to  
13 present it. As you know, the rules are  
14 strict.

15 BY MR. BENSON:

16 Judge, someone's impression of what they  
17 perceive is not hearsay. That would be -- if  
18 a witness came in here and said, "I saw the  
19 car skid," well, that would be hearsay  
20 according to Mr. King's analysis. Cherie  
21 Cunningham is saying that, "I looked at a  
22 picture, and I compared it to this one and I  
23 think it's the same person." We introduce the  
24 death certificate. That's a perception; that  
25 is not hearsay.

1 BY MR. KING:

2 But she can't testify to either of the  
3 pictures of Lavelle Thompson. It is hearsay.  
4 It is hearsay.

5 BY MR. BENSON:

6 The death certificate will do that.

7 BY MR. KING:

8 It is hearsay.

9 BY MR. BENSON:

10 We'll get a certified one; you can do that  
11 in two minutes. I mean if defense counsel is  
12 going to challenge --

13 BY MR. KING:

14 This isn't rebuttal; it doesn't rebut. I  
15 don't know what else to say.

16 BY THE COURT:

17 Well, it certainly rebuts the idea that  
18 there was this suspect floating around out  
19 here that no one had anything to do with in  
20 this case.

21 BY MR. KING:

22 Which -- who brought that up? Who brought  
23 that up? Did the defense?

24 BY THE COURT:

25 The State will say you did, and you'll say

1 the State did.

2 BY MR. KING:

3 Well, let's read the record. You already  
4 read your notes and you found out it was  
5 Benson's redirect on Outlaw.

6 BY THE COURT:

7 But that was after your cross.

8 BY MR. KING:

9 My going into Thompson is after he brought  
10 that up. And if we have to take a moment here  
11 and look at the transcript, let's do it.

12 BY THE COURT:

13 I agree that the name was not mentioned  
14 first by the defense; there is no question  
15 about that.

16 BY MR. KING:

17 That's not rebutting what the defense case  
18 is. We just simply are not. It's the same  
19 situation as before with the phone  
20 conversations in that respect. He brings it  
21 out and now he wants to rebut what he brought  
22 out into the evidence. It doesn't work like tha

23 BY MR. BENSON:

24 You have to link that to what Sheila  
25 Donald says.



1 BY THE COURT:

2 You're the one that pointed out that he  
3 was killed in that neighborhood by --

4 BY MR. KING:

5 After he brings his name up for heaven's  
6 sake.

7 BY MR. BENSON:

8 He testified off the death certificate.  
9 Now, he wants to challenge its authenticity.

10 BY THE COURT:

11 What do you mean he testified off the  
12 death certificate?

13 BY MR. BENSON:

14 Oh, he was reading right off of it when,  
15 "Do you know that the guy was shot?" and read  
16 the address off and everything else. Now he  
17 has the nerve to challenge the authenticity.  
18 We'll get it certified if that's what he  
19 wants, but he read it practically right off  
20 there. He stood in front of the jury and  
21 waved that document.

22 BY MR. KING:

23 If counsel could possibly explain, what  
24 possessed him to inject the man's name in the  
25 first place? What did he expect?

905

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MAY 23 1997

1436

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT  
VANES 001445

1 BY MR. BENSON:

2 It was defense counsel who gave us that  
3 name. And if I hadn't, who do I know who  
4 would have walked up there from his side and  
5 said, "Yeah, we had this name Lavelle  
6 Thompson," blah, blah, blah, blah.

7 BY MR. KING:

8 Did anybody do that?

9 BY THE COURT:

10 If he had, he had injected it first. You  
11 knew that you had already done something,  
12 right? You knew that you could rebut that if  
13 he had said you didn't do anything.

14 BY MR. BENSON:

15 That's right.

16 BY MR. KING:

17 And, once again, I would ask for the  
18 record to reflect -- I've already stated we  
19 are not making that argument to this jury  
20 about Lavelle Thompson. We are not.

21 BY MR. BENSON:

22 But the comment is in.

23 BY MR. KING:

24 By you. You brought it in.

25 BY MR. BENSON:

1                   No, your comment about some --

2           BY MR. KING:

3                   You're hoisted by your own petard.

4           BY THE COURT:

5                   No, the killing of the man was brought in  
6                   by the defense.

7           BY MR. BENSON:

8                   A crack house, a bullet in the back of the  
9                   head and who lives right in that neighborhood.  
10                  If counsel wasn't trying to imply this guy did  
11                  it, what was he trying to do by that comment?  
12                  Two days after the murder, he got that in too.  
13                  You know, if that doesn't practically -- and I  
14                  know the judge struck that, but I believe some  
15                  damage was done by that, Judge, and that's why  
16                  we want to put this evidence on just to clear  
17                  up the fact that in no way, shape or form was  
18                  this guy ever a suspect.

19          BY THE COURT:

20                  Well, what I'm going to do: You've given  
21                  me your arguments on this, and since it's  
22                  11:30, I'm going to call the jury in and send  
23                  them to lunch, I'm going to listen to the tape  
24                  of pertinent portions of Outlaw's testimony,  
25                  and --

1 BY MR. BENSON:

2 As well as Sheila Donald's, please, what  
3 she said about our office.

4 BY THE COURT:

5 Well, perhaps. I think she was pretty  
6 neutral about that, but I'll listen to it.

7 BY MR. BENSON:

8 I think the first time it was a blanket  
9 statement, "Nobody did anything."

10 BY MR. KING:

11 Judge, let's listen to what all she said;  
12 because, counsel, there's no wrong on the  
13 record.

14 BY THE COURT:

15 Would you bring in the jury, please?

16 BY MR. KING:

17 Now, Judge, whatever you end up ruling on  
18 this, can we take a little bit of lunch break  
19 here and be prepared to go right into closing  
20 arguments?

21 BY THE COURT:

22 What are you asking for on the lunch  
23 break?

24 BY MR. KING:

25 Well, I'm thinking it's 11:30, if we



1 reconvene maybe at 1:15, that will give us  
2 time for an instruction conference, counsel  
3 time to prepare for closing, and then a brief  
4 period of time to either have further argument  
5 or simply have the Court's ruling on this  
6 issue that is presented. I think that's  
7 reasonable; I don't know what the State  
8 thinks.

9 BY THE COURT:

10 Well, but we may also need time for  
11 rebuttal if I rule in their favor.

12 BY MR. KING:

13 Well, we're just talking about what time  
14 the jury is going to come back from lunch. So  
15 they're either going to come back and hear  
16 rebuttal or they're going to come back and  
17 hear closings.

18 BY THE COURT:

19 Right.

20  
21 WHEREUPON THE JURY WAS BROUGHT INTO OPEN  
22 COURT AND THE FOLLOWING PROCEEDINGS WERE HELD  
23 IN THEIR PRESENCE AND HEARING:

24  
25 BY THE COURT:

1 Counsel, if you would approach the bench  
2 one moment so we can finish that thought.

3  
4 WHEREUPON A DISCUSSION WAS HELD AT THE  
5 BENCH OUTSIDE OF THE HEARING OF THE JURY AND  
6 OFF THE RECORD REGARDING SCHEDULING:  
7

8 BY THE COURT:

9 Members of the jury, I cannot go into  
10 detail at all with you about the matters that  
11 we're conducting outside the presence of the  
12 jury or it wouldn't have been proper to  
13 conduct them outside your presence in the  
14 first place.

15 But it continues and right now we're going  
16 to send you ladies and gentlemen of the jury  
17 to lunch. I don't think there's any question  
18 any more about this case extending into next  
19 week; we are going to finish today, and you're  
20 going to hear arguments. But at the present  
21 time, we're going to escort you to lunch and  
22 again admonish you not to converse about the  
23 case while you're away at lunch.

24 The jury is excused.  
25

1 jury or it wouldn't have been proper to  
2 conduct them outside your presence in the  
3 first place.

4 But it continues and right now we're going  
5 to send you ladies and gentlemen of the jury  
6 to lunch. I don't think there's any question  
7 any more about this case extending into next  
8 week; we are going to finish today, and you're  
9 going to hear arguments. But at the present  
10 time, we're going to escort you to lunch and  
11 again admonish you not to converse about the  
12 case while you're away at lunch.

13 The jury is excused.  
14

15 WHEREUPON THE COURT RECESSED AND  
16 RECONVENED AND THE FOLLOWING PROCEEDINGS WERE  
17 HELD OUTSIDE OF THE PRESENCE AND HEARING OF  
18 THE JURY:  
19

20 BY THE COURT:

21 Okay, I'm prepared to rule, and I would  
22 find that the two witnesses offered may  
23 testify, Cunningham and Belinsky, as to the  
24 issue that was raised by the State on  
25 rebuttal.

1 BY MR. KING:

2 Which issue?

3 BY THE COURT:

4 The issue of the photograph that is  
5 contained in that which is in evidence, and as  
6 I understand it, the limited issue from  
7 Belinsky that she has been shown that  
8 photograph, has seen it.

9 BY MR. KING:

10 We ask if the Court is overruling the  
11 hearsay objections.

12 BY THE COURT:

13 We will if you have a reliable copy of the  
14 death certificate and connect what you said  
15 you could connect, Cunningham and the  
16 photograph.

17 BY MR. BENSON:

18 Mr. Fleming went to Gary to get that; that  
19 was at the Gary branch. He should be back; he  
20 left at 12:00 o'clock. He should be getting  
21 back momentarily.

22 BY THE COURT:

23 What's he getting?

24 BY MS. LAKE:

25 The certified copy of the death



1 certificate.

2 BY THE COURT:

3 All right. Well, then we're not ready to  
4 begin because there is an objection.

5 BY MR. KING:

6 And I demand the production by the State  
7 to the defense, which hasn't been done to  
8 date, and these photographs they're talking  
9 about are in the coroner's office that's the  
10 bases of those comparisons.

11 BY THE COURT:

12 Well, that's one of the bases.

13 BY MR. KING:

14 So I demand production by the State under  
15 the continuing discovery order of those  
16 photographs.

17 BY MR. BENSON:

18 I think defense counsel has been aware of  
19 those and he was free to look at them at any  
20 moment. And we will tender those at this  
21 time.

22 BY THE COURT:

23 You can take care of that at this time.  
24 We can't begin until that document gets here.

25 BY MR. KING:

1                   Right, and what I will do is I will ask  
2                   this Court as we begin to state a continuing  
3                   objection and reiterate all the grounds  
4                   previously made.

5                   BY THE COURT:

6                   Sure.

7                   BY MR. KING:

8                   And now I am assuming this Court is  
9                   limiting the scope, particularly the  
10                  examination of Ms. Belinsky, on the issue they  
11                  have proffered. I mean we're not going to get  
12                  back into a rehash of the direct examination.

13                  BY THE COURT:

14                  It has to be limited by definition in  
15                  rebuttal, but I think one of the keys in the  
16                  cases I read over the noon hour is this  
17                  evidence is not only there to potentially  
18                  contradict something at trial but also be  
19                  explanatory of something at trial. And I  
20                  think it could be both on rebuttal, and that's  
21                  why it's permitted.

22                  Okay, we'll recess until the State is  
23                  ready to go.

24

25

1 WHEREUPON THE COURT RECESSED AND  
2 RECONVENED AND THE FOLLOWING PROCEEDINGS WERE  
3 HELD IN THE PRESENCE AND HEARING OF THE JURY:  
4

5 BY THE COURT:

6 The State will be proceeding with some  
7 rebuttal evidence at this point.

8 BY MR. BENSON:

9 Thank you, Judge. At this time, the State  
10 would call Cherie Cunningham to the witness  
11 stand.

12 Cherie CUNNINGHAM,  
13 having been first duly sworn upon her oath,  
14 testifies as follows:

15 DIRECT EXAMINATION

16 BY

MR. BENSON

18 Q Ms. Cunningham, would you please state your  
19 full name and spell it for the court reporter,  
20 please?

21 A Cherie Cunningham, C-h-e-r-i-e C-u-n-n-i-  
22 n-g-h-a-m.

23 Q Where are you employed, Ms. Cunningham?

24 A Lake County prosecutor's office.

25 Q And how long have you been employed there for?

915

1446

VANES 001455

1 A Almost two years.

2 Q And what are your general duties with that  
3 office?

4 A I'm in the victim-witness division.

5 Q Would you please tell the ladies and gentlemen  
6 of the jury what you do in the victim-witness  
7 division?

8 A I open files, I work with victims of  
9 crimes, witnesses, I work with the trial  
10 deputies, anything they need, typing,  
11 anything like that.

12 Q I would like to direct your attention  
13 specifically to this case and ask you if you  
14 happened to become involved in attempting to  
15 ascertain a picture of a Lavelle Thompson?

16 A Yes, I did.

17 Q And how did you do that?

18 A I called his mother on the telephone and  
asked her to bring some pictures down of  
Lavelle, which was done.

BY MR. KING:

22 Objection. Hearsay.

23 BY THE COURT:

24 Overruled at this point. You may go on.

25 BY MR. BENSON:



1 Q You received pictures from who?

2 A From his sister.

3 Q And after you received these pictures, what  
4 did you do?

5 A I gave them to you and had one picture  
6 blown up.

7 Q Did you contact anyone or attempt to try to  
8 have any laboratories to do that ?

9 A Purrell Color Lab in Crown Point -- yes, I  
10 did.

11 Q And after that was accomplished, did you have  
12 occasion to do anything else with those  
13 pictures?

14 A No, I gave them to you.

15 Q And were those subsequently returned?

16 A Yes, they were.

17 Q Who were those returned to?

18 A I still have them in my office; no one  
picked them up yet.

Q I would like to show you what's been admitted  
into evidence as Defendant's Exhibit 7 and ask  
you if out of those six photographs, do you  
recognize the picture which you received from  
Lavelle Thompson's family?

23

24

25

A Yes, I do.

1 Q And which picture is that?

2 A Number four.

3 BY MR. BENSON:

4 I have no further questions. Thank you,  
5 Ms. Cunningham.

6 BY MR. KING:

7 I have no questions.

8 BY THE COURT:

9 You may step down. Counsel, could I see  
10 you at the bench here for a moment?  
11

12 WHEREUPON THE FOLLOWING DISCUSSION WAS  
13 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
14 THE JURY:

15 BY THE COURT:

16 Did I understand you to indicate that you  
17 had some sort of certificate of death?  
18

19 BY MR. BENSON:

20 Yes, we received that. I was going to  
21 move to admit that and then call Kim Belinsky  
22 just to say she looked at that picture along  
23 with the other ones and it wasn't him. That's  
24 all.

25 BY THE COURT:

918

1449

1 All right.

2 BY MR. KING:

3 Well, they don't need to put that  
4 certificate in at this point. You overruled  
5 my hearsay objection.

6 BY THE COURT:

7 I anticipated that would be coming in  
8 through Cunningham.

9 BY MR. KING:

10 I understand, but there is no basis to  
11 admit the certificate into the evidence and,  
12 certainly, no basis to admit that certificate  
13 into the evidence for the purposes of the  
14 jury, and I absolutely object to it.

15 I object. I made my hearsay grounds, the  
16 Court overruled, and I accept that and I will  
17 live with it. Now, there is no relevance for  
18 the admission of that document. None.

19 BY THE COURT:

20 Other than the fact that it was brought  
21 out at trial that he was dead. I understand  
22 you were arguing to indicate that Cherie  
23 Cunningham somehow was able to recognize the  
24 photo because of the coroner's file.

25 BY MR. BENSON:

1 She could do that too.

2 BY MR. KING:

3 But the point is it's irrelevant, the  
4 death certificate. There is no basis --

5 BY THE COURT:

6 That's the only reason I thought that  
7 anything from the coroner's office was  
8 relevant because it somehow tied in to  
9 Cunningham 's ability to identify. It  
10 certainly would corroborate what she said so  
11 far.

12 BY MR. BENSON:

13 I'll recall her if it's the Court's  
14 pleasure.

15 BY MR. KING:

16 Why am I up here?

17 BY THE COURT:

18 Because you're to be included in  
19 everything.

20 BY MR. KING:

21 But my point is that my objections were  
22 overruled and I live with it, and now I had to  
23 listen to --

24 BY THE COURT:

25 Well, I have a point of view too.

920

MAY 23 1997

1451

*Anna N. Anton*  
CLERK LAKE SUPERIOR COURT

VANES 001460



1 expected that that would be corroborated by  
2 something from the coroner's file.

3 BY MR. BENSON:

4 I believe it's relevant because defense  
5 counsel testified through one of his questions  
6 that this guy was shot and killed, and so now  
7 we have his testimony and it's in the record.

8 BY THE COURT:

9 The only thing that I thought the  
10 coroner's file was relevant for was for the  
11 purpose of identifying who Lavelle Thompson  
12 is, because that's what you said during your  
13 argument.

14 BY MR. BENSON:

15 Well, I thought there would be an  
16 objection from defense counsel in terms of  
17 foundation for that picture.

18 BY THE COURT:

19 There was.

20 BY MR. KING:

21 There was an objection on the basis of  
22 hearsay.

23 BY THE COURT:

24 There was; there was an objection on the  
25 basis of hearsay.

1 BY MR. BENSON:

2 I'll recall her.

3 BY THE COURT:

4 Certainly, I think that -- that's what I  
5 indicated I would admit and still will admit  
6 whatever rebuttal I expected, which is more  
7 evidence than what she gave.

8 BY MR. BENSON:

9 I'll recall her; no problem.

10 BY MR. KING:

11 I object to recalling; I object to the  
12 admission of the exhibit on the grounds --

13 BY THE COURT:

14 The only reason I do it is it's consistent  
15 with our hearing outside the presence of the  
16 jury.

17 BY MR. KING:

18 I know, but the State's the proponent of  
19 the evidence. They chose not to follow that.  
20 I made my objection in a timely fashion, you  
21 know, the Court wasn't conditional about it,  
22 the Court overruled it, so there is no basis  
23 to admit this document. Now, if they want to  
24 admit it and they want to make a part of the  
25 record, that, but what I'm saying, it doesn't

1 go back to the jury. It has no bases, it has  
2 no impact on the trier of fact in this case.

3 BY THE COURT:

4 But the purpose of the death certificate  
5 is identification.

6 BY MR. KING:

7 But she didn't tie her testimony in in  
8 terms of the picture in any way, shape or form  
9 to the certificate. And we can't undo what's  
10 happened here.

11 BY THE COURT:

12 Well, it's not over yet.

13 BY MR. KING:

14 You admitted the exhibit, Your Honor.

15 BY THE COURT:

16 The exhibit was already admitted; I didn't  
17 admit it through her.

18 BY MR. KING:

19 You admitted the testimony.

20 BY THE COURT:

21 I admitted her testimony.

22 BY MR. KING:

23 I understand.

24 BY THE COURT:

25 Well, you have stated your objection. You

1           may recall Ms. Cunningham.

2       BY MR. BENSON:

3           Would the Court allow me to just put the  
4           exhibit in or do they want testimony from Ms.  
5           Cunningham?

6       BY THE COURT:

7           Well, I thought the very purpose of that -  
8           - I don't think the exhibit alone is rebuttal.  
9           The only thing that made it valid was that it  
10          bolstered Cunningham's identification.

11      BY MR. BENSON:

12           We'll recall.

13

14           WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
15          ONCE AGAIN HELD IN THE HEARING OF THE JURY:

16

17      BY MR. BENSON:

18           We would ask that Ms. Cunningham be  
          recalled to the witness stand, please.

          DIRECT EXAMINATION CONTINUED

          BY

          MR. BENSON

23      Q     Ms. Cunningham, you're the same Ms. Cunningham  
24           that just finished testifying, correct?

25      A     Yes, I am.

924

1455

1 Q After you received the picture of this Lavelle  
2 Thompson from his family, did you have  
3 occasion to view any coroner's photographs?

4 A Yes, I did.

5 Q And how did that occur?

6 A I went over to see if there were any  
7 pictures available from the coroner's  
8 office.

9 Q How did you become aware the coroner would  
10 have any?

11 A I had worked with his family filling --

12 Q Whose family?

13 A Lavelle Thompson's family -- filling out a  
14 violent crime application. When there's a  
15 murder victim, they're entitled to that,  
16 so I helped them. And I knew the name  
17 Lavelle Thompson.

18 BY MR. KING:

Move to strike, again, on the  
grounds of hearsay.

BY THE COURT:

Yes, if you're attempting to put in  
23 anything from that by way of evidence in the  
24 case, I would --

25 BY MR. BENSON:



1           No, it's only being offered to show the  
2           effect that it had on Ms. Cunningham in terms  
3           of where she went to go look.

4       BY THE COURT:

5           All right, for that purpose, its effect on  
6           this witness, I would admit it; but any  
7           statements from the family are hearsay at this  
8           point.

9       BY MR. BENSON:

10      Q     And you looked at those coroner photographs?

11      A     Yes, I did.

12      Q     And the coroner's pictures, did they match the  
13           pictures you received from the family?

14      A     Yes.

15      BY MR. BENSON:

16           No further questions. Thank you very  
17           much.

18      BY MR. KING:

19           No questions.

20      BY THE COURT:

21           That's all.

22      BY MR. BENSON:

23           At this time, the State of Indiana would  
24           move to admit State's Exhibit 22, the death  
25           certificate of Lavelle Clay Thompson.

1 BY MR. KING:

2 I renew my objection on the grounds  
3 previously noted of relevance.

4 BY THE COURT:

5 Okay. Admit for the limited purpose which  
6 we discussed here outside the presence of the  
7 jury.

8  
9 WHEREUPON STATE'S EXHIBIT NUMBER 22 IS  
10 ADMITTED INTO EVIDENCE.

11  
12 BY MR. BENSON:

13 The State would recall to the witness  
14 stand at this time Ms. Kimerly Belinsky.

15 BY THE COURT:

16 All right.

17 KIMERLY BELINSKY,  
18 having been previously sworn upon her oath,  
19 testifies as follows:

20 DIRECT EXAMINATION

BY

MR. BENSON

23 Q Kimerly, you're the same Kimerly Belinsky that  
24 testified previously in this matter, correct?

25 A Yes.

927

1458

1 Q Do you understand that you're still under oath  
2 from your previous testimony?

3 A Yes.

4 Q You were under a separation of witness order  
5 when you were outside the courtroom. Did you  
6 speak to anybody about this case while you  
7 were out there the last three or four days?

8 A No.

9 Q Kim, I would like to direct your attention to  
10 approximately three weeks ago and ask you if  
11 you had occasion to view eighteen photographs?

12 A Yes.

13 Q I would like to show you what's been marked as  
14 State's Exhibit 17, Defense Exhibit 7, Defense  
15 Exhibit 8 and ask you if those were the  
16 eighteen photographs that you viewed?

17 A Yes.

18 Q And prior to that time, had you ever seen any  
19 of the pictures from Defense Exhibit 7 and  
Defense Exhibit 8?

A On the day that I looked at it?

22 Q Prior to that date.

23 A No.

24 Q And please tell the ladies and gentlemen of  
25 the jury what happened when you were shown



1           those photographs. How did that occur?

2           A           You called me and we went upstairs and--

3           Q           Was there anyone else present?

4           A           And another man.

5           Q           Nestor Melendez, the investigator?

6           A           Yes.

7           Q           And what happened when those photographs were  
8           put in front of you?

9           A           I looked at them.

10          Q           And that was including State's Exhibit 17  
11          also?

12          A           Yes.

13          Q           And after viewing all those photographs, were  
14          you able to identify the person who robbed and  
15          murdered your fiance, Bernard Jiminez?

16          A           Yes.

17          Q           And who was that person as depicted in those  
18          photographs?

          A           Number two.

          Q           Pardon?

21          A           Number two.

22          BY MR. BENSON:

23                   I would like the record to reflect the  
24          witness has identified number two in State's  
25          Exhibit 17.

1 Q And isn't that the same person that you had  
2 previously identified?

3 A Yes.

4 Q I would like to direct your attention  
5 specifically to Defendant's Exhibit Number 7  
6 and picture number four, the picture of  
7 Lavelle Thompson. Does that picture in any  
8 way, shape or form coincide with the person  
9 you saw murder your fiance February 27th,  
10 1992?

11 A No.

12 Q Are you in your mind positive it is not that  
13 person?

14 A Yes.

15 BY MR. BENSON:

16 Thank you very much. No further  
17 questions.

18 CROSS-EXAMINATION

19 BY

20 MR. KING

21 Q Mr. Belinsky, just one question: The picture  
you did pick out is, of course, the very same  
picture you had picked out back on March the  
3rd, 1992, is that correct?

25 A Yes.



1 BY MR. KING:

2 Thank you very much. No further questions.

3 BY THE COURT:

4 I don't believe I caught the day that you  
5 saw these photos. Would you state that?

6 BY MR. KING:

7 Two weeks ago I think the testimony was.

8 BY THE COURT:

9 What did you say, Ms. Belinsky, as to when  
10 you saw these photos?

11 BY THE WITNESS:

12 A couple of weeks ago.

13 BY THE COURT:

14 All right.

15 BY MR. BENSON:

16 At this time, we would ask that Ms.  
17 Belinsky be allowed to remain in the  
18 courtroom.

19 BY MR. KING:

20 Yes, there's no objection. I assume this  
21 is the end of the State's case?

22 BY THE COURT:

23 Right. The State is resting its rebuttal.

24 BY MR. BENSON:

25 At this time, the State of Indiana would

1 rest, Your Honor.

2 BY THE COURT:

3 Counsel, you have had an opportunity to  
4 look at the instructions. Do you wish a  
5 further conference on those?

6 BY MR. BENSON:

7 Nothing by the State.

8 BY MR. KING:

9 No, Your Honor. For the record, there's  
10 nothing further to tender on behalf of the  
11 defense nor does the defense object to any of  
12 the proposed final instructions of the Court  
13 numbered one through twenty-two. I would note  
14 for the record I have not yet had the  
15 opportunity to see the proposed form of  
16 verdicts. I anticipate I will be shown those  
17 before submission to the jury.

18 BY THE COURT:

19 Could we do that right now without  
20 breaking?

21

22 WHEREUPON THE FOLLOWING DISCUSSION WAS  
23 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
24 THE JURY:

25

1 BY THE COURT:

2 Since there are no lessors, Mr. King, Mr.  
3 Benson and Ms. Lake, I just have verdicts of  
4 guilty and not guilty covering each count. I  
5 didn't look at them; I'm relying on my court  
6 reporter. I don't find any gross errors in  
7 there. Okay?

8 BY MR. KING:

9 Yes.

10 BY THE COURT:

11 All right, counsel has seen the verdict  
12 forms.

13 BY MR. BENSON:

14 Will they have a copy of the charging  
15 information back there also?

16 BY THE COURT:

17 As part of instruction number one.

18 BY MR. BENSON:

19 I would only request that the name of the  
20 victim be put into the different counts  
21 because we do have two different robbery  
22 counts. I believe that one of them is Class A  
23 and one of them is Class B, but it might be  
24 more articulate to have the name.

25 BY THE COURT:

1                   They're in here, in the instructions.

2           BY MR. BENSON:

3                   I'm just -- that was my objection.

4           BY THE COURT:

5                   Well, they're in the instructions.

6           BY MR. BENSON:

7                   Well, note my objection.

8           BY THE COURT:

9                   All right.

10

11                   WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
12                   ONCE AGAIN HELD IN THE HEARING OF THE JURY:

13

14           BY THE COURT:

15                   We're prepared at this point for final  
16                   arguments. Did you want to talk from the  
17                   podium out there as well, Mr. Benson? I think  
18                   Mr. King does.

19           BY MR. BENSON:

20                   I believe Ms. Lake Will.

21           BY THE COURT:

22                   All right, how much time are you  
23                   requesting for final arguments?

24           BY MR. BENSON:

25                   May we approach, please?

1 BY THE COURT:

2 All right.

3  
4 WHEREUPON THE FOLLOWING DISCUSSION WAS  
5 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
6 THE JURY:

7  
8 BY MR. BENSON:

9 We would request forty minutes.

10 BY MR. KING:

11 An hour.

12 BY THE COURT:

13 An hour? You're requesting an hour?

14 BY MS. LAKE:

15 About forty-five minutes.

16 BY MR. KING:

17 I have been in trial all week here.

18 BY THE COURT:

19 How about fifty minutes?

20 BY MS. LAKE:

21 That's good.

22 BY THE COURT:

23 We might have to break with that much  
24 time.

25 BY MR. BENSON:



1                   Forty minutes.

2       BY THE COURT:

3                   Let's see if you can even make it for  
4                   fifty; I'll give you fifty. But if you need a  
5                   couple minutes to close up after that much  
6                   time, you can summarize; I won't cut you off  
7                   in an instant.

8  
9                   WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
10                  ONCE AGAIN HELD IN THE HEARING OF THE JURY:

11       BY THE COURT:

12                  The State and the defendant will make  
13                  their final arguments to the jury at this  
14                  point, ladies and gentlemen. Remember -- you  
15                  have been jurors before, you understand that  
16                  what the attorneys now say is not evidence in  
17                  the case; that is completed.

18                  However, it's an important part of the  
19                  proceedings; you should pay close attention to  
20                  the arguments. It's up to the jury to  
21                  evaluate the arguments.

22                  The parties are now permitted to be  
23                  argumentative. You may have heard objections  
24                  during the trial that some question was  
25                  argumentative and it would be sustained if I

1 felt it was. Now, they can be argumentative;  
2 they cannot attempt to mislead you, and will  
3 not, but if at any point the attorneys'  
4 recollection of the admissible evidence in the  
5 case differs from your own, then you must  
6 follow your own recollection as to what you  
7 saw and what you heard by way of admissible  
8 evidence. That goes for testimony and the  
9 exhibits as well.

10 The State has the right under our code of  
11 procedure to both open and close at the final  
12 argumennt stage because the State has the  
13 burden of proof in the case. However, each  
14 side is allotted the same amount of time for  
15 making their arguments to you.

16 Ms. Lake, you're going to give the State's  
17 opening portion of the argument?

18 BY MS. LAKE:

19 Yes, Judge.

20 BY THE COURT:

21 All right. You may start.

22 BY MS. LAKE:

23 Thank you, Judge. Counsel, ladies and  
24 gentlemen of the jury: First of all, Mr.  
25 Benson and I would like to thank you very much

1 for your close attention. We know it has been  
2 a long week and jury selection was very  
3 tedious, and I know there are a lot of times  
4 that you had to wait as we had arguments at  
5 the bench. We would both like to thank you,  
6 Mr. Benson and myself, for your close  
7 attention in this case.

8 Ladies and gentlemen of the jury, the  
9 evidence in this case is overwhelming that  
10 this defendant, Willie Donald did murder  
11 Bernard Jiminez as well as rob Bernard Jiminez  
12 and that he robbed Rhonda Williams, both on  
13 February 27th, 1992.

14 You will recall Rhonda Williams testifying  
15 that she resided at 4409 Connecticut Street on  
16 the night that this happened. She told you  
17 that evening she was asleep, she was in bed.  
18 She had to work midnights; she worked as  
19 assistant manager at White Castle. And she  
20 told you that she was awoken by a sound that  
21 came from her window in her bedroom; she told  
22 you that when she heard that sound that she  
23 estimated the time to be 8:45 p.m.

24 She immediately turned on all the lights  
25 in her house and she went to look at the

1 window to see who was out there. When she did  
2 not see anyone out there, she laid back down  
3 in the bed and was going to go back to sleep  
4 when she heard a knock at her door. She went  
5 to the door and she heard a male voice say,  
6 "It's your neighbor." She told you, ladies  
7 and gentlemen, that she didn't recognize that  
8 male voice but she believed the person at the  
9 other side of that door, that it was, indeed,  
10 the neighbor.

11 So Rhonda went to the door; she opened the  
12 door. It was at this point Rhonda told you,  
13 ladies and gentlemen, that it was this man on  
14 the other side of that door with a gun pointed  
15 at her face. She told you she looked straight  
16 at him; she was focused on his face.

17 She told you, ladies and gentlemen, that  
18 she and the defendant began to tussle for the  
19 gun and she put her hands up to try to get the  
20 gun out of her face. It was at this point,  
21 the defendant had control of the gun and made  
22 her back up into her house. She was backing  
23 up into her house and she was watching the  
24 defendant; she was looking at his face and she  
25 was looking at that gun.

1           She got back in the house, and at that  
2 point, she was held with the gun, and she had  
3 the defendant instructing her to go throughout  
4 the house and the gun was at her back. The  
5 defendant was at that point behind her.

6           The defendant demanded money from her.  
7 She said, "I have money on my dresser," in her  
8 bedroom. They went to the bedroom; she gave  
9 the defendant the fifty dollars. The  
10 defendant, she told you, became a little  
11 irritated and said, "Is this all you have? I  
12 want more money." She said that was all she  
13 had.

14           At that point, this defendant instructed  
15 her to lie on the ground, and as she was lying  
16 on the ground, this man took a pillow, put it  
17 back behind her head, held the gun to her  
18 skull, and Rhonda told you the only thing  
19 going through her mind was, "I'm going to  
20 die."

21           He started to count, and he said, "If you  
22 don't come up with more money, I'm going to  
23 blow your head off." She told you she thought  
24 it was over; and she told you it seemed like  
25 forever.



1           The defendant took the gun off her head  
2           and started to go around her house. Rhonda  
3           told you he started to go through canisters in  
4           her house, he went through her coat pockets;  
5           he first of all started with her purse,  
6           started throwing things out of her purse onto  
7           the ground looking for more money.

8           She told you this defendant said to her,  
9           quote, "I hate to rob blacks," but he  
10          continued to look through her items and tried  
11          to find more money. She told you she was on  
12          the ground and she continued to try to watch  
13          the defendant.

14          During this altercation, during the  
15          defendant's search for more money, her alarm  
16          clock went off. Rhonda told you, laides and  
17          gentlemen, that she knew it was at 9:00  
18          o'clock when that alarm went off because she  
19          had to get up to go to work. The alarm went  
20          off, she was going to turn off the alarm, and  
21          she heard the defendant say, "I'd better get  
22          out of here."

23          At one point during the time that this  
24          defendant was in her house, she told you he  
25          began to leave; and it was at that point, she

1 started to crawl to the front door to try to  
2 close the door and lock it when this defendant  
3 re-entered the house.

4 She told you that he finally left, but  
5 before he left, he made her stand outside on  
6 the porch because there were neighbors outside  
7 and the neighbors were getting a little  
8 suspicious, so he had Rhonda stand outside on  
9 the porch to look at the neighbors with the  
10 gun pointed in her back.

11 After coming back inside from the porch,  
12 she was instructed to lie back down. She did.  
13 And before lying down, the defendant said, "Do  
14 you have a screwdriver?" She said they went  
15 to the kitchen, she gave him a screwdriver, he  
16 threw the screwdriver in her face over her  
17 head. She told you she was looking at his  
18 face when he threw that screwdriver.

19 Again, she was instructed to lie down, and  
20 she does; and she told you she estimated it to  
21 be about 9:20, 9:25 when this defendant  
22 finally left her house that evening.

23 Ladies and gentlemen, think of all the  
24 times, think of all of her opportunities to  
25 observe this defendant, Willie Donald. She

1 told you her porch light was on; she told you  
2 she was focused on the defendant's face and  
3 the gun as they were tussling on the porch.  
4 She told you her hallway lights were on, she  
5 told you her bedroom lights were on, her  
6 living room lights were on. She turned all  
7 the lights on in her house when she heard that  
8 noise at the bedroom window.

9 She told you this defendant was in her  
10 house for half an hour to forty minutes that  
11 evening. She said she got a good look at his  
12 face from the time she was on the porch,  
13 during the struggle, and later when he threw  
14 the screwdriver over her head.

15 When Officer Faulkner arrived at the scene  
16 later that evening after she had called the  
17 police, she told them that she thought this  
18 defendant was wearing gloves. We learned  
19 later, ladies and gentlemen, that was not  
20 true. The crime lab did not take fingerprints  
21 as they had thought at the time that this  
22 perpetrator was wearing gloves.

23 Later on that evening, right down the  
24 street, at 4660 Massachusetts Street, the  
25 Jiminez family: Kim Belinsky, she's with her

1 three children, she's with her fiance, Mr.  
2 Jiminez. She told you she was just coming  
3 home with the family and her fiance; they had  
4 been to McDonalds, they didn't like the dinner  
5 she prepared that evening. They went to Toys  
6 R Us to get gifts for the kids for their good  
7 report cards; they went to her aunt's house in  
8 Hobart, and they were hurrying home to get  
9 home to watch Knots Landing, which was on at  
10 9:00 o'clock that evening.

11 When they got home that evening, they had  
12 a lot of packages and the three children in  
13 the vehicle. Kim told you that she was  
14 getting out of the vehicle, she was holding  
15 one of the children, she was grabbing packages  
16 and grabbing Bernard's work clothes.

17 The first thing Kim noticed was the dog  
18 was off the leash. She told you as she was  
19 getting to the porch and she saw the dog was  
20 off the leash, she yelled to her fiance, she  
21 yelled to Barnard, "Where's the dog? He's off  
22 the leash." She was getting to her porch.

23 In the meantime, Mr. Jiminez was locking  
24 up the car; it was parked on the street she  
25 told you, and he was starting to come up the

1 walkway. As she's yelling about the dog, she  
2 heard Mr. Jiminez yell, "Get in the house."

3 It was at that point she saw this  
4 defendant moving through the inside of the  
5 yard; it was at that point that she saw  
6 Bernard run past the defendant yelling, "Get  
7 in the house. Get in the house." Mr. Jiminez  
8 was doing what any man would do, ladies and  
9 gentlemen, who was trying to protect the  
10 family that he loved and he cared about. He  
11 ran to the porch where they were, yelling for  
12 them to, "Get in the house," as this defendant  
13 continues to approach with a gun.

14 This defendant demanded Mr. Jiminez to  
15 give him money. Mr. Jiminez responded, he  
16 took money out of his pocket and he threw it  
17 on the sidewalk. You saw the pictures, ladies  
18 and gentlemen. They were inside the yard  
19 right by the sidewalk. Mr. Jiminez threw  
20 money on the sidewalk, and the defendant said  
21 to him after picking up the money, "You don't  
22 value your family, do you? Don't fuck up."

23 At that point, he approached Kim, he  
24 approached that family. He pointed a gun on  
25 the baby's forehead and said, "You're fucking



1 up, man. You must not value your family. You  
2 had better come up with more money."

3 He saw Kim's purse. Kim told you she was  
4 about two and a half feet from this defendant,  
5 she's looking straight at him; she gives him  
6 her purse. He doesn't even look inside the  
7 purse, he puts it right under his arm, still  
8 holding the gun on her face, still holding the  
9 gun at other times on the different children.

10 It was at that point Mr. Jiminez comes up  
11 on the porch. Kim told you he kicked her a  
12 little bit so she would scoot back, so he  
13 could try to attack him. He threw a bench  
14 that was close by at the defendant.

15 Kim told you she was somehow able to kick  
16 that door in, and she got her children inside.  
17 And the only thing she could think of was to  
18 get the children in the bedroom and run to get  
19 the gun that she knew was in the house. She  
20 was in the house for a few seconds, she got  
21 the kids in the bedroom, she ran to get the  
22 gun but she couldn't figure out how to work it  
23 in her panicked state.

24 She heard four shots. She ran outside,  
25 and she saw her fiance running with his arms

1 in the air, and she thought to herself, "Oh,  
2 my God, he's safe. He made it." She saw him  
3 running next door.

4 It was at that point she got a phone call  
5 from the neighbor; it was at that point she  
6 called the police. And she learned that her  
7 fiance was dying on the porch next door across  
8 the street.

9 Think of all the ways, think of all the  
10 times that Kim Belinsky had an opportunity to  
11 observe that man (indicating). They were  
12 looking at each other face to face, and she  
13 told you her porch light was on; she told you  
14 they had a dome light that was over the porch.

15 She told you the robbery only took a few  
16 minutes and she was only about two and a half  
17 feet from this man looking at his face. And I  
18 would submit to you, ladies and gentlemen, if  
19 a person had a gun to your baby's head and if  
20 a person had a gun in your face and he was  
21 yelling at your fiance, you're not going to  
22 forget what he looks like.

23 Rodney Gray testified that he heard an  
24 argument for about five minutes. He heard  
25 someone say, "Give me your damn money." He

947

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1478

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

VANES 001487

1 heard someone say, "I'm going to kill you."  
2 He looked over at the Jiminez residence and he  
3 saw Kim facing a person, a male black in his  
4 twenties; that's how he describes him. And  
5 Mr. Gray said they were facing each other;  
6 they were about five feet apart at the point  
7 that he looked.

8 You heard from the evidence, you heard  
9 from the stipulation of Doctor Gross that Mr.  
10 Jiminez died at 10:35 that evening from a  
11 gunshot wound to his head and his left chest,  
12 that there was a .22 caliber bullet that was  
13 removed from his body and from his Cubs jacket  
14 that was recovered at the hospital by the  
15 crime lab.

16 Ladies and gentlemen, I'm asking you to  
17 focus on their opportunities to observe.  
18 There is no doubt in their minds that this is  
19 the man who committed these horrendous crimes.

20 And I ask you to recall the clothing  
21 descriptions, the facial descriptions that  
22 both Kim gave you and Rhonda gave you and how  
23 closely they match.

24 Rhonda told you the defendant was wearing  
25 a black leather jacket, black clothing; Kim

1 told you dark clothes, she told you a black  
2 jacket. Rhonda said he had a black Kangol  
3 cap; Kim said he had a black hat with  
4 something sticking out from underneath the  
5 cap. Rhonda told you that in her mind was a  
6 red bandanna. And if you recall when Kim was  
7 asked, she said, "It could have been a red  
8 bandanna." Rhonda said he was five nine or  
9 five ten; Kim said he was five ten. Both said  
10 he had a medium complexion; both said he had  
11 bump-like acne scars, whatever you will, on  
12 his face, on his cheeks.

13 Look at him, ladies and gentlemen. You  
14 had a chance to look at him as he walked in  
15 front of you. There is no question that the  
16 defendant is the person that committed these  
17 crimes.

18 Also consider, ladies and gentlemen, that  
19 both Kim and Rhonda picked this defendant out  
20 of a photo, out of several photos. Rhonda  
21 testified she looked at hundreds of photos and  
22 she was positive; she told you she was positive  
23 when she got to number two. Kim told you the  
24 lighting was a little bit off, she couldn't be  
25 sure, she wanted to see a line-up, but she

1 thought number two was the man that did these  
2 things.

3 And, ladies and gentlemen, you can see how  
4 the lighting is a little different; it has a  
5 little bit of a greenish tone (indicating).

6 Thank God there was a line-up. And if you  
7 recall, both Rhonda and Kim identified number  
8 four in the line-up. You heard Bruce Outlaw  
9 testify when Kim viewed that line-up, before  
10 they even moved forward, before they turned to  
11 the left, before they turned to the right, she  
12 had her finger up and she was shaking and she  
13 was pointing. And he told her to wait until  
14 they had finished the line-up procedure. And  
15 Kim pointed him out at her first opportunity,  
16 "That's him. I'm sure."

17 Bruce Outlaw told you Kim was shaking, Kim  
18 started to cry, Kim ran to the bathroom and  
19 threw up after seeing him in the line-up.

20 Bruce Outlaw told you also Rhonda, when  
21 she saw this defendant in that line-up, she  
22 was shaking. She was very upset; she said she  
23 was sure.

24 When the search warrant was conducted,  
25 ladies and gentlemen, the next day, some



1 sixteen hours after this defendant had been  
2 arrested and the rest of the family is around  
3 by the residence, ask yourselves is it so  
4 surprising that the police aren't able to find  
5 the evidence. The search warrant is  
6 conducted, nothing turns up, but sixteen hours  
7 go by.

8 And Sheila Donald told you that they knew  
9 that this defendant had been picked out of a  
10 line-up, she knew that her brother, this  
11 defendant, had been picked out of the photos  
12 with a possible murder charge coming and  
13 robbery charges. And ask yourselves and use  
14 your common sense. Is it that unlikely  
15 nothing is found?

16 I'm asking you to consider very closely  
17 the instruction on the credibility of  
18 witnesses. There are several factors as I  
19 told you during jury selection that you can  
20 consider as to which witness you should  
21 believe and which witness you may question.

22 You have to use your common sense from  
23 everyday life, but there are certain factors  
24 to consider with their credibility, such as  
25 ask yourselves when you think of the witnesses

that testified for the State of Indiana, when you think about the defense witnesses, ask yourselves who had an interest in this case. Ask yourselves who is biased in this case. Who has a stake in the outcome of this case?

I submit to you, it's not the State of Indiana's witnesses; it's the defendant's alibi witnesses, the defendant's sister, Sheila Donald, the defendant's sister's fiancée, Dan Hopkins. Who had interest of seeing that this alibi is believed? The family members.

Ask yourselves whose testimony is really reasonable when taken together with all the evidence. I think you will agree after careful consideration that it's the State's witnesses, the victims in this case.

I do want you to think about the alibi witnesses and consider what each of them said and how their stories just do not match up.

Consider Barbara Price, one of the employers at the defendant's place of employment. She told you he makes a hundred and fifty dollars a week. Now, this defendant wants you to believe -- and we're

1 not contesting at all the defendant worked  
2 that day; we stipulated to those records. We  
3 know the defendant worked February 27th.

4 It's when the defendant left work that we  
5 reached our disagreement. This defendant  
6 wants you to believe, ladies and gentlemen,  
7 that he went car shopping with his sister,  
8 Sheila, and her fiancée, Dan, that he was car  
9 shopping from the time he left work at about  
10 5:30 until approximately 10:00 that evening.

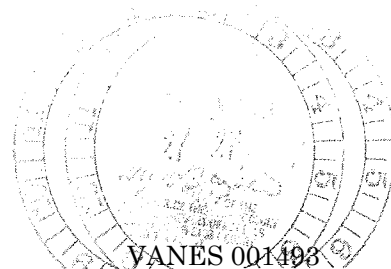
11 Now, if you remember, Sheila Donald told  
12 you that they had been car shopping constantly  
13 not only that week, she told you they had been  
14 car shopping twice the week of this crime.  
15 And she also told you she had been shopping  
16 that month for a car, at least four times.

17 Could they have gotten the day mistaken?  
18 Is it really true that this defendant was with  
19 them car shopping? Ask yourselves that  
20 question.

21 Sheila's testimony is that when she's at  
22 the police station, when she finds out from  
23 Bruce Outlaw that her brother is being held  
24 and going to be charged with murder, going to  
25 be charged with robbery, she doesn't think of

953

1434



1 the alibi. She finds out the date; she told  
2 you she had read the newspaper accounts. She  
3 knows about the date, but she doesn't say  
4 anything to Bruce Outlaw, and she knows Bruce  
5 is investigating the case.

6 She drives home. She's telling you it  
7 hits her. She's driving home; on the way  
8 home, she realized, "Oh, that's the day I was  
9 with the defendant car shopping." Does she  
10 drive back to the police station? No. She  
11 goes back home. She doesn't tell Detective  
12 Outlaw she says until he's searching the house  
13 some seventeen hours later.

14 Dan Hopkins tells you that he didn't even  
15 know the defendant was being held overnight  
16 for a possible murder charge; he thought it  
17 was a traffic offense. He didn't find it  
18 unusual that he was being held overnight for a  
19 traffic offense.

20 And he wants you to believe, ladies and  
21 gentlemen, that Sheila came home from the  
22 police station and didn't share the  
23 information with him, that it was not until  
24 the search warrant Dan put together the dates,  
25 and Dan did not tell the police officer at

1           that time about this supposed alibi.

2           I submit to you, ladies and gentlemen,  
3           that Sheila Donald and Dan really did go car  
4           shopping, but it's our contention that this  
5           defendant wasn't the third person that was  
6           there. And they may even be wrong on the  
7           date.

8           Both car dealers have testified for the  
9           defense; Ron Moos and Richard Sisson recall an  
10          incident. They recall meeting both Sheila and  
11          Dan. Did you find it so surprising when they  
12          testified neither one could identify him as  
13          that third person?

14          Richard Sisson told you he didn't know  
15          when this incident had occurred that he had  
16          given them prices on the different vehicles  
17          that they test drove. He told you it could  
18          have happened in January, it could have  
19          happened in February, it could have happened  
20          in March, a span of three months; and he saw  
21          Sheila and he saw Dan, and he couldn't  
22          identify him (indicating).

23          Ron Moos told you that they had gotten a  
24          van in, that's how he knew it was February  
25          26th, not the 27th. And he knew that he had



1 met Sheila, he knew that he had met Dan. But  
2 remember what he said about the third person.  
3 Not only could he not identify the defendant,  
4 he told you that that third person had been  
5 drinking. He was sitting in that van and he  
6 had the music all the way up, and in his  
7 opinion, he thought he was drunk.

8 BY MR. KING:

9 Your Honor, now, I have been  
10 patient, but that is just a mis-  
11 statement. The word "drunk" was  
12 never issued in this courtroom.

13 BY MR. BENSON:

14 Could we approach, Judge, if there's going  
15 to be an argument and objection?

16 BY THE COURT:

17 I'll sustain the objection that the word  
18 "drunk" was not used, "drinking."

19 BY MS. LAKE:

20 Drinking -- excuse me, counsel -- that he  
21 had been drinking.

22 Now, ladies and gentlemen, has there been  
23 any evidence -- and we have stipulated to the  
24 fact that the defendant was working that day  
25 --has there been any evidence whatsoever that

1 the defendant had been drinking? I submit to  
2 you the third person wasn't the defendant.

3 Ladies and gentlemen, I ask you to  
4 carefully consider all the witnesses that  
5 testified and this alibi. And after careful,  
6 close consideration, close scrutiny of the  
7 witnesses' testimony, you will all agree with  
8 me, and I'm very confident you will agree with  
9 me, that this defendant is the one that  
10 committed that murder, this defendant is the  
11 one that robbed Bernard Jiminez and killed him  
12 on February 27th, and this defendant is the  
13 person is the one that robbed Rhonda Williams.

14 After considering all the evidence very  
15 carefully, you will convict him, find him  
16 guilty of all three counts. Thank you.

17 BY MR. KING:

18 May it please the Court, counsel for the  
19 State, ladies and gentlemen of the jury: Good  
20 afternoon.

21 I want to thank you for paying careful  
22 attention; notbody is going to be able to read  
23 another person's mind, but watching you, we  
24 asked and sort of stressed even how important  
25 it is at trial that you keep attentive and

1 keep an open mind until you have heard  
2 everything, and I want to thank you for doing  
3 that. I want to thank you for not pre-  
4 judging, and pre-judging is so very easy to  
5 do.

6 More than two hundred years ago, it was  
7 established that in the United States of  
8 America if you charge someone, if you as  
9 representatives of government of the state or  
10 the United States, if you charge someone,  
11 anyone, no matter who they are or where they  
12 come from with a crime, you are obliged,  
13 obligated, required to prove that charge  
14 beyond a reasonable doubt. Possibilities,  
15 probabilities just don't cut it. Beyond a  
16 reasonable doubt.

17 And even longer, even before we were a  
18 country, the doctrine of law developed that a  
19 person, any person, no matter who you are or  
20 where you come from, is presumed by law to be  
21 innocent. That presumption was with this kid  
22 at the beginning of this case, it is with him  
23 now, and it will follow him with you into the  
24 jury room as you begin to deliberate and  
25 evaluate. You are dealing with an innocent

1 man. That is what the law says.

2 And as I go through with you what this  
3 case has shown us and what this case has not  
4 shown us, I believe you will agree with me  
5 that not only does the law say Willie Timothy  
6 Donald is innocent and presumed innocent, but  
7 so does the evidence and the lack of evidence  
8 in this case.

9 I don't know how many times in this case  
10 we heard excuses. "We have budgetary  
11 problems; that's why the crime lab can only do  
12 certain things. We have budgetary problems in  
13 the city of Gary, and that's why the police  
14 can only do certain things." Take those  
15 excuses and throw them out of the door of that  
16 courtroom and don't ever let them walk into a  
17 courtroom again.

18 What kind of miserable bologna is that?  
19 You, on the one hand, as the State of Indiana,  
20 are going to accuse one of your citizens of  
21 murder; and then you're going to say, "Gee,  
22 the budget is tight. It's going to be tough,  
23 you know, to check this out. It's going to be  
24 tough to look for fingerprints. We don't have  
25 the money to do it." But, hey, it does not

1 work like that. It does not work like that.

2 The evidence in this case I submit to you  
3 -- if you reflect back on jury selection, if  
4 you reflect back on opening statements, I  
5 believe you'll agree with me -- the evidence  
6 in this case has been what we said it would  
7 be, what the defense said it would be.

8 There are two witnesses in terms of the  
9 issue in this case, and let's be clear on the  
10 issue, the issue was not and is not was there  
11 a murder committed, not were there robberies  
12 committed; it's who committed them.

13 I ask you to reflect that -- I asked you  
14 to do that in opening -- which witnesses had  
15 anything to say about who did these crimes.  
16 And I submit if you review everything in this  
17 case, you're going to agree with me. Who?  
18 Ms. Williams and Ms. Belinsky. Now, there has  
19 been nothing more offered in this case I  
20 submit to you on the issue of who committed  
21 the crimes but the testimony of those two  
22 women.

23 Now, I would like to at this point make  
24 something clear to everyone in this court. I  
25 am not now, nor have I ever during the course



1 of these proceedings, suggested that either of  
2 those two women lied. I don't know if the  
3 State will accuse me of that or not; I don't  
4 care. I'm telling you folks that if you  
5 reflect back to when I questioned both those  
6 women, I submit to you they didn't lie.

7 What's a lie? What is a lie? I submit to  
8 you that a lie is if you know something is a  
9 particular way. If I know that these ear  
10 phones are white and when somebody asks me,  
11 "What color are the ear phones?" and I say,  
12 "Black," I have lied. I intentionally mis-  
13 stated what the truth is.

14 But since we have been kids, we are  
15 familiar with the phrase and the concept of  
16 honest mistake. Honest mistake. And we've  
17 all had that happen to us. Either we've  
18 committed an honest mistake or somebody has  
19 done that to us. That's not a lie, but it  
20 doesn't make it the way it happened. And  
21 that's the distinction with a difference here.

22 I will not say a bad word about either of  
23 those two young ladies, but I will say to you  
24 that they are mistaken, honestly, to be sure.  
25 We have to go back in time and evaluate how

1 Ms. Williams and Ms. Belinsky came to point  
2 the accusing finger at Willie Donald.

3 We first of all have to go back and  
4 reflect upon the commission of the crimes, and  
5 we have to evaluate the timing and the  
6 circumstances involved in the commission of  
7 these crimes, the time and the circumstances  
8 involved in the contact they had with the  
9 robber.

10 It is not enough, as the State would have  
11 you do, to just throw out blanket assertions  
12 of the times without a closer analysis.  
13 Nobody can do justice in this case without  
14 going back and looking at these times  
15 precisely. First of all, we have to look at  
16 the times the best we can off what was  
17 reported initially to the police; we have to  
18 look at those times.

19 Now, let's start with one thing that was  
20 even mentioned in closing by the State. The  
21 State says Ms. Williams testified that the  
22 person that robbed her left her home at about  
23 9:25. Well, if that's so, then the person  
24 who robbed and shot and killed Mr. Jiminez  
25 couldn't have gotten there by a quarter after

1 9:00, which is the time Ms. Belinsky recalls.  
2 It's not possible.

3 Again, does that mean these ladies are  
4 lying? No. Let's remember and look at some  
5 of the things she told us. Let's look at one  
6 phrase Ms. Williams in particular said -- and  
7 I think Ms. Lake even mentioned it, "It seemed  
8 like a long time. It seemed like an eternity  
9 how long this person was there." I'm sure it  
10 did; that doesn't mean it was. Her perception  
11 of time, of necessity, is affected by what's  
12 going on.

13 Now, I think she has a couple of ties to  
14 the time, one of which when she woke up at  
15 8:45 because she checked her clock. The  
16 second one is the alarm going off.

17 Routinely -- I don't know about you, but  
18 my alarm has been set at 5:30 in the morning  
19 for as long as I can remember, and that is the  
20 time the alarm goes off during a work week --  
21 and she recalls 9:00 o'clock is the time for  
22 her. And she recalls the alarm going off  
23 during the period of time the robber is there,  
24 so we know he's there at 9:00 o'clock.

25 But I submit to you she cannot -- and I

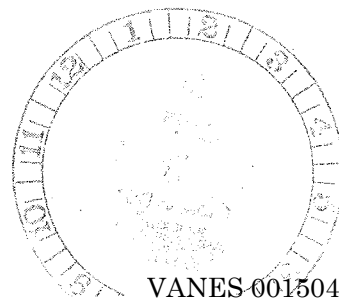
1 don't think she particularly was -- she cannot  
2 be precise with how long it was before the  
3 person left.

4 Now, the State tells us, "Well, you're in  
5 this situation, there's a fellow with a gun,  
6 and it's a terrifying situation," and then  
7 they're going to explain to us, "Well, this is  
8 how you're going to think, and this is how  
9 it's going to affect you."

10 Now, with all due respect to both  
11 prosecutors in this case, I don't think  
12 anybody is really equipped to tell anybody  
13 else how they're going to react in that  
14 situation unless they've been through it  
15 themselves, unless they've experienced it  
16 themselves. How can anybody really know what  
17 effect a situation, a traumatic situation,  
18 like this would have on you if you haven't  
19 gone through it yourself?

20 It is absolutely your worst nightmare.  
21 Your worst nightmare. Somebody with a gun has  
22 invaded your space, your home, your yard in  
23 one case, is threatening you, your safety.

24 You are face to face with the prospect of  
25 dying. Mortal man's greatest fear, fear of



1 dying. And it's not something you're watching  
2 in a movie, it's not something you're watching  
3 on a television program, it's not something  
4 you're watching on a news reel, it's something  
5 you are watching inches away from the business  
6 end of a gun.

7 And for the State to simply tell us,  
8 "Well, this, then, is how you're going to  
9 react --" and I hope it never happens to them  
10 -- but I don't think they're in a position to  
11 tell us that.

12 We have to recall, yes, there is a period  
13 of time the robber is with both these women.  
14 So we have to look at the facts.

15 You remember Ms. Williams' testimony. The  
16 first thing she describes is the gun in her  
17 face. This is a person who comes in the door  
18 when she has opened it thinking it's the  
19 neighbor. Then what did we hear in terms of  
20 the most, the biggest chunk of time this  
21 robber is with her? The fellow has got her  
22 turned around with the gun in her back, laying  
23 on the floor with a pillow over the head at  
24 the one time where he's apparently trying to  
25 force some money out of her.



1           Now, I'm not saying Ms. Williams during  
2           the period of time this robber is here didn't  
3           see the man's face. I'm not saying that at  
4           all. But unlike what the State would have you  
5           believe, it was not the majority of the time  
6           given what she described happened.

7           And how the fear she had to have affected  
8           her perceptions is something that we can only  
9           guess at. But to say that that means you're  
10          going to be better at being sure about what  
11          you're seeing is no more fair than for me to  
12          tell you automatically it means you're going  
13          to be worse at it. We just don't know how the  
14          human mind and senses are going to react to  
15          that.

16          With Ms. Belinsky, the same thing. It's a  
17          relatively short period of time this robber is  
18          right up at the porch. And here this poor  
19          woman is trying to shield her kids, she's  
20          trying to keep track of what this guy is doing  
21          with her fiance, the threat to herself. At  
22          one point, she did indicate there was a  
23          turning away; we can fully understand that.  
24          She's on this porch.

25          Now, ladies and gentlemen, once again, I'm

1 not saying she didn't see the face but, again,  
2 she was terrified when she did, and she wasn't  
3 in a position to just sit there making the  
4 sort of observations we can commonly make here  
5 in a courtroom.

6 I can't say, in looking at all of you  
7 right now, that in five days from now --  
8 because we've been together for a week, and  
9 nobody has been pointing a gun at any of us --  
10 if I see you in five days in a mall or out  
11 shopping I will recognize you and you will  
12 recognize me.

13 But that does not mean if our contact was  
14 of the sort described by Ms. Williams and Ms.  
15 Belinsky that that would be so. I'm not  
16 saying it isn't, but don't let the State tell  
17 you it is so. There is just no evidence that  
18 we can use to come to that sort of decision.

19 We have to of necessity look at the  
20 descriptions given every time we have a record  
21 of Ms. Williams and Ms. Belinsky giving a  
22 description, we have got to explore it.

23 Now, number one, let's talk about the  
24 height. We heard this rather thoroughly  
25 presented, and we did find out there is on

1 record both these young laidies at one point  
2 very early when the police were checking out  
3 what happened said that the fellow that did  
4 this was five feet seven inches tall; and both  
5 these ladies at a later point said the man  
6 that did this was five feet ten inches.

7 Now, I know Ms. Williams denies telling  
8 that to Officer Faulkner, and I know Officer  
9 Faulkner said, "Well, she said, 'about,'" but  
10 ladies and gentlemen, you saw in this court,  
11 you heard it, what was written on the offense  
12 report by the officer -- who I'm assuming was  
13 trying to write down as accurately as he can  
14 -- was five feet seven inches.

15 And in the statement given on February  
16 28th by Ms. Belinsky to Detective Outlaw, she  
17 said five foot seven inches. Now, it later  
18 went to five foot ten inches. It's a curious  
19 coincidence that both of the different heights  
20 with both of the witnesses are the same, five  
21 seven and five ten.

22 There's a question there. There is a  
23 question there. It doesn't make them liars  
24 but, again, we get a glimpse, at least, maybe  
25 this is the impact and effect of going through

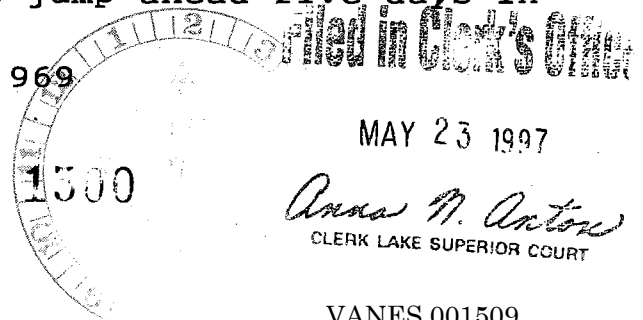
1 trauma like this, a scary thing like this.

2 Then we have to look at when you recall  
3 that, even here on the stand and when we  
4 looked at the other descriptions given, once  
5 we got past the height, what was the single  
6 most noted feature about the robber by both  
7 these women and later the policewoman and her  
8 daughter? Scars on the face; scars on the  
9 face. Not pimples, not blackheads, not acne.  
10 Ms. Williams described it as "bump-like scars.  
11 Mr. Belinsky, "as though pimples had been  
12 scratched away and scars left behind."

13 That is, and was, in terms of the face,  
14 the single description, the single most  
15 important and noted description by both these  
16 young ladies and, again, the policewoman and  
17 her daughter, Sonya.

18 Now, Ms. Belinsky and Ms. Williams also  
19 talked about eyes, the style and shape of  
20 eyes, and then, of course, we have the  
21 clothing which, rather universally, was  
22 described by all of the people that night.  
23 Now, this is what we have as of 9:30,  
24 Thursday, February 27th, 1992.

25 Now, we have to jump ahead five days in



**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION**

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) |                             |
| Plaintiff,                             | ) | No. 2:17-CV-00032-TLS       |
|  | ) |                             |
| v.                                     | ) | Judge Theresa L. Springmann |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 33

## Plaintiff's Summary Judgment Response



**In The Matter Of:**  
*WILLIE T. DONALD vs*  
*BRUCE OUTLAW, CARLA K. PYLE et al*

---

*Videotaped Deposition of: SCOTT L. KING*  
*July 17, 2019*  
*Case No. 2:17-CV-00032*

---

**BOSS REPORTERS**  
*Gary \* Merrillville \* Valparaiso, Indiana*  
*3893 East Lincoln Highway (Rt. 30)*  
*Merrillville, Indiana 46410*  
*(219) 769-9090*



Original File 07-17-19 Scott King.txt  
Min-U-Script® with Word Index

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

WILLIE T. DONALD, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No.  
 ) 2:17-CV-00032  
BRUCE OUTLAW, CARLA K. PYLE, )  
as Special Administrator of )  
the ESTATE OF JOHN E. JELKS, )  
JR., CITY OF GARY, and other )  
as-yet unknown Employees of )  
the City of Gary, )  
 )  
Defendants. )  
 )

The Videotaped Deposition of SCOTT L. KING

Date: Wednesday, July 17, 2019

Time: 1:21 o'clock p.m.

Place: 1085 Broadway, Suite B  
Gary, Indiana

Called as a witness, by the Defendants, in  
accordance with the Federal Rules of Civil  
Procedure, pursuant to Notice.

Before Beth A. Barnette, CSR,  
Illinois License No. 084-004727  
Notary Public, State of Indiana

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(219) 769-9090

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23 On Behalf of Defendant Estate of John E. Jelks, Jr.

25 ALSO PRESENT: Marvin Oltman, Videographer

1 THE VIDEOTAPED DEPOSITION OF SCOTT L. KING  
 2 DIRECT EXAMINATION  
 3 By Mr. Tolbert..... Page 5  
 4

5 E X H I B I T S  
 6 DEFENDANT'S MARKED IDENTIFIED  
 7 Exhibit No. 1 27 27  
 8 Exhibit No. 2 46 47  
 9 Exhibit No. 3 58 58  
 10 Exhibit No. 4 63 63  
 11 Exhibit No. 5 68 69  
 12 Exhibit No. 6 70 71  
 13 Exhibit No. 7 72 72  
 14 Exhibit No. 8 90 90  
 15 Exhibit No. 9 92 92  
 16 Exhibit No. 10 115 115  
 17 Exhibit No. 11 127 127

18  
 19 \* \* \*  
 20  
 21  
 22  
 23  
 24  
 25

**Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032**

4

1 VIDEOGRAPHER: We are now on the  
2 record in the matter of Willie T. Donald  
3 versus Bruce Outlaw, et. al., in the United  
4 States District Court, for the Northern  
5 District of Indiana. The case number is  
6 2:17-CV-32. Today's date is July 17th, 2019.  
7 The time is now 1:21 p.m. This is the  
8 video-recorded deposition of Scott King. We  
9 are located at 1085 Broadway, Suite B, in  
10 Gary, Indiana.

11 My name is Marvin Oltman. I'm the  
12 legal video specialist representing Levidco.  
13 The court reporter is Beth Barnette with Boss  
14 Reporters. For the record will counsel please  
15 identify themselves, starting with the party  
16 noticing these proceedings.

17 MR. TOLBERT: My name is Michael  
18 Tolbert and I represent the City of Gary.

19 MR. HALL: Ricardo Hall for Bruce  
20 Outlaw.

21 MR. WALKER: Tony Walker  
22 representing the Estate of John Jelks.

23 MR. DRURY: Scott Drury on behalf  
24 of the plaintiff, Willie T. Donald.

25 VIDEOGRAPHER: Would the court



**Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032**

5

1 reporter please swear in the witness.

2 SCOTT L. KING,

3 called as a witness, by the Defendants, having first  
4 been duly sworn, was examined and testified as  
5 follows:

6 THE WITNESS: I do.

7 COURT REPORTER: Thank you.

8 DIRECT EXAMINATION

9 BY MR. TOLBERT:

10 Q Okay. Attorney King, my name is Michael  
11 Tolbert. I know we know each other outside of  
12 the professional setting, but you're here  
13 today to be deposed in the matter of Willie  
14 Donald versus Outlaw, Jelks, et. al., City of  
15 Gary, and the lawyers in this case have  
16 questions about your representation of a  
17 Mr. Willie Donald in, I believe, in the  
18 earlier part of 1992. I know that is a long  
19 time ago and there could be some things that  
20 you might not necessarily remember, but we'll  
21 try to do the best we can with some documents  
22 to kind of put in front of you and hopefully  
23 that might jog our memory on some things.  
24 Okay?

25 I am going to go through your

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

6

1 deposition, try do this in an organized  
2 fashion so we don't waste your time and the  
3 lawyers that are present, as well as the court  
4 reporter and videographer's time. So I'm  
5 going to go over your background, I'm going to  
6 go over your education, your professional  
7 experience, your representation of Mr. Donald  
8 in 1992, and your contact or any dealings that  
9 you had related to Mr. Donald after his  
10 conviction in 1992. All right? So those are  
11 going to be the areas that I'm going to go  
12 over and I'll try to go over those as quickly  
13 as possible.

14 If -- I know you're a lawyer. You've  
15 been practicing for a number years and you've  
16 probably taken a number of depositions, but  
17 just try to remember to answer the questions  
18 out loud because the court reporter can't take  
19 down grunts or nods of heads, and try to let  
20 me finish my question before I get it out so  
21 the court reporter can actually get the  
22 question and answer. All right?

23 If you need to take a break, let us  
24 know, or if there's some pressing obligation  
25 or professional obligation or something that

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

7

1 requires that you leave immediately, let us  
2 know and we can obviously accommodate that as  
3 well, or at least try to. All right?

4 So why didn't we start off with your  
5 full legal name for the record.

6 A Scott, middle name Louis, last name King.

7 Q And where do you reside?

8 A Gary, Indiana.

9 Q If we needed to subpoena you for trial  
10 testimony, where would you accept the  
11 subpoena?

12 A It would be best served at my office, 9211  
13 Broadway, Merrillville, Indiana, 46410.

14 Q And how long have you been at that location?

15 A Well, a number of years.

16 Q And what is your highest educational  
17 attainment? What's your highest degree that  
18 you have?

19 A Highest earned degree is a jurist doctorate.  
20 I had a doctor of law conferred on me by my  
21 undergraduate university.

22 Q Okay. And where are you originally from? Are  
23 you from --

24 A Chicago, Illinois.

25 Q Okay. And where did you go to undergraduate?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

8

1 A Concordia University, River Forest, Illinois.  
2 Q And what did you study?  
3 A It was a general program. Education was in  
4 there, speech. I think those were the two  
5 majors.  
6 Q And what years were you at Concordia  
7 University?  
8 A I think '70 to '73.  
9 Q And did you get a degree from Concordia?  
10 A Yeah, I got a bachelors degree in '73.  
11 Q And did you go to law school right after?  
12 A I did.  
13 Q Okay. And where did you go to law school?  
14 A Valparaiso University.  
15 Q And what years did you go to Valpo law?  
16 A I think '73, graduated in '76.  
17 Q After you graduated from Valpo law in 1976,  
18 did you begin practicing immediately?  
19 A Well, I had to take a bar exam first.  
20 Q Uh-huh.  
21 A But after I took and passed my first bar exam,  
22 I began practicing.  
23 Q All right. So you would have began practicing  
24 in maybe the fall of 1996 -- 1976, I mean?  
25 A Yeah, very late fall.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

9

1 Q Do you remember what your first legal job was?

2 A I worked for a -- as a -- well, when I was in  
3 law school, I had a clerking position.

4 Q Who did you clerk for?

5 A Well, actually, Tabor, Bozik & Hartman in  
6 Valparaiso.

7 Q Okay. And once you passed the bar exam and  
8 became a licensed practitioner, a lawyer,  
9 where did you start practicing law?

10 A Yeah, I was -- I can't remember the nature of  
11 the relationship, if I -- but I worked with an  
12 attorney named John Morse, as in the code.

13 Q And where was John Morse located?

14 A Ellicott City, Maryland.

15 Q And was that a solo -- was he a solo  
16 practitioner or was that a law firm?

17 A A solo practitioner.

18 Q Okay. So it would have just been the two of  
19 you in his practice?

20 A There was some -- there was another fellow who  
21 was semi-retired. I have no idea what his  
22 name was.

23 Q And how long did you work in Maryland with  
24 Mr. Morse?

25 A I'm estimating a year, maybe a little bit more



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

10

1           than a year.

2       Q       Did you have a specific area of focus during  
3           that time?

4       A       It was a general practice. So, no, I didn't.

5       Q       Did that general practice include criminal  
6           work?

7       A       It did.

8       Q       Okay. Do you have an idea of what percentage  
9           of criminal work that you would have done in  
10          that general practice?

11      A       No.

12      Q       Okay. And when you left Mr. Morse, where did  
13          you go?

14      A       I was hired by -- there was a union, a trade  
15          union, quartered in Washington, D.C. that  
16          offered, as part of their benefits plan for  
17          their members, offered legal representation,  
18          and I have no idea what the name of the union  
19          was. So I went -- I was there, and then I was  
20          also associated with another attorney in the  
21          Ellicott City area, whose name escapes me. So  
22          I was doing both of those.

23      Q       Okay. So your work with the trade union would  
24          have been sort of like an in-house counsel  
25          position or --

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

11

1 A Well, it was -- there were attorneys,  
2 District, Maryland, and Virginia, you know,  
3 depending on where their client was from, or  
4 wherever the case was.

5 Q Right.

6 A And I was one of the -- one of two, I think,  
7 attorneys from Maryland.

8 Q Okay.

9 A If memory serves me.

10 Q When did you start that position, if you  
11 recall?

12 A I have no idea.

13 Q Okay. Do you know how long you would have  
14 practiced there?

15 A I think I was there until I -- I don't, no, I  
16 don't recall.

17 Q Was the practice area focus, was it labor work  
18 or --

19 A No, no. This was handling all sorts of, you  
20 know, routine legal matters for the members.  
21 So it ranged from -- there was some criminal,  
22 some domestic, some general, civil. It was a  
23 mix of things.

24 Q Okay. You don't recall how long you stayed  
25 there, but --

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

12

1 A I don't.

2 Q -- where was the next position that you --

3 A After that I think I was hired by the  
4 newly-elected Lake County, Indiana Prosecutor.

5 Q And who was that?

6 A Jack Crawford.

7 Q Do you remember when that was?

8 A '78.

9 Q And what was your position?

10 A A deputy prosecutor.

11 Q And did you start off immediately in a  
12 specific division of the prosecutor's office?

13 A You started off -- everybody started off, as  
14 did I, in the misdemeanor division, county, I  
15 think -- I don't think it was county courts  
16 back then. Maybe it was. Misdemeanor  
17 division. Then I transitioned into the felony  
18 division.

19 Q Do you remember how long you stayed in  
20 misdemeanor before you transitioned to felony  
21 division?

22 A Not very long.

23 Q Okay.

24 A But I don't recall how long.

25 Q Okay. That's fair enough. All right. And

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

13

1           how long did you stay in the felony division,  
2           if you recall?

3    A       Well, I started in '79. Somewhere around '81.

4    Q       All right.

5    A       '81, or so. Then I was hired as an associate  
6           by a firm in Merrillville, Conan & Thiros.

7    Q       When was that?

8    A       Well, as near as I can recollect, sometime in  
9           1981.

10   Q       How many -- go ahead, I'm sorry.

11   A       Then I was offered back a position with the  
12           prosecutor's office in '82. I was there for  
13           less than a year and I was hired as an  
14           Assistant U.S. Attorney for the Northern  
15           District of Indiana in '83.

16   Q       Okay. So you went back to the prosecutor's  
17           office in 1982 after a stint with Conan &  
18           Thiros.

19   A       Yes.

20   Q       And Conan & Thiros is a -- they did a lot of  
21           criminal defense; is that right?

22   A       Yeah, they did. I mean, they did a variety,  
23           but the biggest part of their case load was  
24           criminal defense.

25   Q       And is that what you did when you were at

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

14

1 Conan & Thiros?

2 A Principally, yes.

3 Q Okay. And then you went back to the

4 prosecutor's office in 1982 and --

5 A Yeah.

6 Q -- how long did you stay?

7 A Not long. Six months, eight months for -- you

8 know, did some felony trials and then got

9 offered a position as an A-USA.

10 Q Okay. So you took that position and became a

11 U.S. attorney?

12 A An assistant U.S. attorney, yeah.

13 Q Okay. Do you remember when that would have

14 been?

15 A Sometime in '83.

16 Q And how long did you stay?

17 A Little more than a year.

18 Q And then where did you go?

19 A I went into private practice.

20 Q So you opened your own law -- own firm?

21 A I did.

22 Q Okay. And when you opened your own firm --

23 well, what type of cases did you handle at the

24 U.S. Attorney's Office?

25 A Criminal cases.



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

15

1 Q Okay. Any -- go ahead, I'm sorry.

2 A My specific assignment was the Organized Crime  
3 and Drug Enforcement Task Force attorney. So,  
4 I think there was some other cases, but  
5 principally larger scale organized crime and  
6 drug enforcement. The bulk of the case load  
7 for that year period was drug cases.

8 Q And when you opened up your own firm -- in  
9 what year was that again?

10 A 1984.

11 Q -- did you have a specific area of focus that  
12 you marketed?

13 A No, we did -- in the '80s -- I'm forgetting  
14 this certainly, at best, more circumspect than  
15 it is now, you didn't -- there were a lot of  
16 prohibitions regarding marketing that don't  
17 exist now. But my focus, my desire for  
18 practice was criminal defense. That had been  
19 most of my experience with government to date.

20 Q Now, when you moved back -- it sounds like  
21 when you moved back to the area, which is Lake  
22 County, Indiana, in about 1978, where did you  
23 pick up your residence?

24 A Initially, in the lovely town of Cedar Lake,  
25 and then -- that didn't last long, then to

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

16

1 Crown Point for a couple of years, and then in  
2 1980 moved to Gary.

3 Q And where you reside today.

4 A No.

5 Q Okay.

6 A Around the corner from where I reside today,  
7 but --

8 Q Okay. Oh, right. But I'm saying you still --

9 A Oh, in Gary, yes.

10 Q -- live in Gary?

11 A I still live in Gary, Indiana.

12 Q Okay. So you've been living in Gary since  
13 about 1980?

14 A Since 1980.

15 Q Okay. And when you opened your own practice,  
16 I'm assuming that a component of that would  
17 have been criminal work?

18 A Yes.

19 Q All right. And where are you employed now?  
20 What is your -- where are you at now?

21 A I am employed by King, Brown & Murdaugh, LLC.

22 Q So you're the principal of that firm or  
23 partner?

24 A Well, I'm a partner. We have equal  
25 partnerships. We have varying shares of the

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

17

1 equity, but the compensation is the same among  
2 all three partners.

3 Q When did you open up King, Brown & Murdock  
4 (sic)?

5 A January of -- January 1st of 2018.

6 Q And before this partnership, King, Brown &  
7 Murdock --

8 A Murdaugh.

9 Q Murdo?

10 A Daugh, D-A-U-G-H.

11 Q Oh, daugh, okay. Where -- were you with a  
12 group of other partners before that?

13 A Before that I was with the same attorneys, but  
14 as a solo practitioner.

15 Q Okay.

16 A For -- I don't know how long.

17 Q Okay. And it's my understanding you were at a  
18 firm Meyer, Wyatt & Gottshall? Do you  
19 remember that?

20 A I was -- in '86, Jim Meyer left the U.S.  
21 Attorney's Office -- he was an A-USA as well,  
22 and he and I formed a partnership. I think a  
23 professional corporation, if memory serves me.  
24 And then over the years, in the early '90s,  
25 early to mid '90s, we brought in -- actually,

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

18

1 I think when I left that firm to take office  
2 as mayor in '96, I think that's when Meyer,  
3 Wyatt, Lyles, and Gottshall, or however they  
4 called it, I think that's when they formed. I  
5 sold my interest in King & Meyer to them. I  
6 don't remember the details of it.

7 Q Okay. So the period of time that I want to  
8 focus on is 1992. What -- who are you with in  
9 1992? Were you a solo practitioner or --

10 A No, I think it would have been King & Meyer.

11 Q Okay. And how many lawyers did you have at  
12 King & Meyer?

13 A I don't remember.

14 Q Okay. It would have at least been two, you  
15 and --

16 A Yeah, it was two, but whether we had any  
17 associates at that time, I think -- I assume  
18 we did, two or three associates.

19 Q And what did you -- what practice area did you  
20 primarily focus on in 1992?

21 A Did I personally?

22 Q Yes.

23 A Criminal.

24 Q Okay. Criminal defense?

25 A Yes.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

19

1 Q Okay. Any specific types of crimes or --

2 A No.

3 Q Okay.

4 A No.

5 Q All right. In 1992, how many jury trials  
6 would you have said you -- would you say you  
7 would have probably had?

8 A I have no idea.

9 Q Okay. How long have you been practicing?

10 A Well, since December of 1976. I was inactive  
11 from January of '96 till sometime in 2006 when  
12 I was in public office.

13 Q Okay. Have you ever had your license  
14 suspended?

15 A No.

16 Q Do you have any certifications?

17 MR. DRURY: Object to form.

18 BY MR. TOLBERT:

19 Q Do you understand the question?

20 A No.

21 Q Okay. They have trial lawyer certifications,  
22 criminal law, specialty certifications.

23 MR. DRURY: Same objection.

24 BY MR. TOLBERT:

25 Q Do you have any specialization or



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

20

1           certifications that would --

2     A       No.

3     Q       -- allow you to hold yourself out as a  
4           specialist?

5     A       No.

6     Q       Okay. Are you a -- do you have any other  
7           licenses outside of an Indiana law license?

8     A       Maryland.

9     Q       Okay. That's it, Maryland and Indiana.

10    A       Well, and then state -- those are the two  
11           states. Then I have admission to the Federal  
12           Bars in the Southern and Northern District of  
13           Indiana, the Northern District of Illinois,  
14           the Trial Bar of the Northern District of  
15           Illinois, the Court of Appeals for the 7th  
16           Circuit, the U.S. Supreme Court, and currently  
17           I'm pro hac vice in the Western District of  
18           North Carolina, and that's it.

19    Q       Okay. Do you have any independent  
20           recollection as you sit here today regarding  
21           the Willie Donald case that you were involved  
22           in in 1992?

23    A       Yes.

24    Q       Okay. What, what recollection do you have  
25           about that case?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

21

1 A Well, I have the recollection that --

2 MR. DRURY: I'll just object to  
3 the form, vague, calls for a narrative.

4 A I have the recollection of when I was hired by  
5 his mother and sisters. That's my recall. I  
6 remember, obviously, Mr. Donald, meeting with  
7 him. I remember being fairly well-convinced  
8 that he was innocent of what he was accused  
9 of.

10 Q Okay.

11 A You know, and then moving forward and  
12 preparing his defense, everything that that  
13 entails.

14 Q So you were hired by his mother and his  
15 sister?

16 A That's who came into my office, yes.

17 Q Do you remember their names?

18 A I do. Sheila is one of them.

19 Q That's the sister or the mother?

20 A Yeah. I don't know.

21 Q Okay.

22 A I remember the name Sheila.

23 Q Okay.

24 A Past that, I can't remember their names.

25 Q So you remember Sheila, but that's the only

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

22

1 name you remember.

2 A Yeah.

3 Q All right. And before coming here today, did  
4 you review any documents that might help you  
5 refresh your recollection regarding  
6 handling -- the handling of Mr. Donald's case?

7 A Yes.

8 Q What did you review?

9 A I don't remember. Earlier today I met the  
10 plaintiff's counsel for the first time for  
11 about 20 minutes in my office, and during the  
12 course of that I was shown various excerpts  
13 from -- not excerpts, I was shown the whole  
14 transcript, but directed to particular  
15 portions; some, I think, of testimony at the  
16 post conviction relief proceeding regarding  
17 Mr. Donald, some from the trial, one or more  
18 from the trial, but motions, either pre or  
19 post trial motions, some reports, police  
20 reports.

21 Q Okay.

22 A That's about it.

23 Q Okay. Now when you say you met with the  
24 plaintiff's attorney, are you talking about  
25 Mr. Scott Drury --

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

23

1 A Yes.

2 Q -- who's in the room today?

3 A Yes.

4 Q Okay. And how was it that you came to meet  
5 him?

6 A Somebody -- I think a partner of his called me  
7 about a week or so ago and indicating, you  
8 know, the deposition was coming up and that he  
9 wanted -- she was calling for him. He was out  
10 of town, or some darn thing. She wanted to  
11 see if it would be okay if they set up a  
12 meeting with me, and I said sure. So they  
13 did. They set it -- they happened to set it  
14 up for today.

15 Q Okay.

16 A And -- at 11:00.

17 Q Okay. And you said that meeting lasted 20  
18 minutes? What --

19 A Yeah, about.

20 Q What did you go over with Mr. Drury?

21 A I just told you.

22 Q What did you -- what was the exchanges? What  
23 were the conversations that you had?

24 A He would ask me similar to what you just asked  
25 about what present memory I had and then

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

24

1           would -- if I said I didn't remember, then he  
2           would show me -- he showed me a couple of  
3           these documents. Some of them he asked if I  
4           had ever -- if I recall ever having seen them  
5           before; the reports mainly, not the  
6           transcripts. There were two or three of  
7           those. That's about it.

8    Q       Did he, did he ask you any opinions, any of  
9           your opinions that you had?

10   A       No.

11   Q       Okay. And when you met with Mr. Donald's, his  
12           mother and his sister, do you remember around  
13           the period of time that meeting would have  
14           taken place?

15   A       I'm -- well, no. I mean, at the outset of the  
16           case. I mean, that's typically -- you know,  
17           usually 90 plus percent of the time it's after  
18           the person's been charged, arrested. That's  
19           typically what kicks it off.

20   Q       Now you said that --

21   A       I don't recall. I assume that's when it was,  
22           about the time of his arrest.

23   Q       Okay.

24   A       So --

25   Q       Now the jury trial and the criminal trial



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

25

1 occurred in June of 1992. Does that sound  
2 about right or do you know?

3 A I don't know.

4 Q Okay. And I think that you testified earlier  
5 that once you met Mr. Donald's, his mother and  
6 his sister, you began working on his case?

7 A As soon as I got hired, yeah.

8 Q Okay. And do you remember the first thing  
9 that you did?

10 A No.

11 Q Okay.

12 A Well, the first thing I would do is read the  
13 charge, the probable cause affidavit and the  
14 information. Shortly after that I would meet  
15 with the client. I mean, this is just kind of  
16 a protocol. Then usually, in a murder case, I  
17 will -- in an Indiana murder case, will file a  
18 petition for habeas corpus to address the bond  
19 issue. I don't recall if I did or not in this  
20 case, but that's the usual in a murder case.  
21 Then wait for discovery to start coming in.

22 Q Okay. From the time that you spoke to  
23 Mr. Donald, his sister, and his mother until  
24 the time the jury trial occurred sometime in  
25 1992, do you feel that you did pretty much all

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

26

1           you could to get Mr. Donald's case ready for  
2           trial?

3    A       Yes.

4    Q       Okay. Do you feel that you were ineffective  
5           in preparing for Mr. Donald's case?

6    A       No.

7                           MR. DRURY: Objection to form.

8    BY MR. TOLBERT:

9    Q       Do you know what I mean by ineffective?

10   A       Yes.

11                          MR. DRURY: Same objection.

12   BY MR. TOLBERT:

13   Q       Okay. What, what do you -- what is your  
14           understanding of ineffective?

15   A       As defined by Strickland versus Washington,  
16           that -- did not perform up to the standard  
17           commonly existing in the jurisdiction.

18   Q       During the jury trial of Mr. Donald, do you  
19           feel that you were ineffective?

20   A       No.

21   Q       Okay. And do you feel that you did everything  
22           that you could to attempt to secure Mr. Donald  
23           an acquittal?

24   A       Yes.

25                          MR. DRURY: Object to the form.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

27

1 BY MR. TOLBERT:

2 Q That's a yes?

3 A Yes.

4 MR. DRURY: Same objection.

5 (Defendant's Exhibit No. 1 marked  
6 for identification.)

7 BY MR. TOLBERT:

8 Q Let me show you what has been marked as  
9 Defendant's Exhibit 1. I'm going to state for  
10 the record what I've just handed you marked as  
11 Defendant's Exhibit 1 is a petition for post  
12 conviction relief that was prepared by  
13 Mr. Donald, and also towards the end there's  
14 a -- starting at Bates stamp which is  
15 identified as DON 702, starts a memorandum  
16 granting post conviction relief, and then the  
17 last page is the last page of that memorandum,  
18 identified as DON 283.

19 A DON 2 what?

20 Q 283, the last page.

21 A Okay.

22 Q Okay. When you met with Mr. Drury earlier  
23 today, did he go over this document with you?

24 A No.

25 Q Okay. Did he ask you about anything related

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

28

1 to Mr. Donald's post conviction relief plea?

2 A Did what?

3 Q Did he ask you about anything related to  
4 Mr. Donald's request for post conviction  
5 relief?

6 A The only reference would have been in the  
7 context of me having testified at the petition  
8 and in the context of the proceeding when  
9 Mr. Donald was represented by counsel, which  
10 he was not at the time of this exhibit.

11 Q Okay.

12 A Petitioner's -- Defendant's 1.

13 Q And this petition for post conviction relief  
14 was filed on May 10, 2004? Do you see the  
15 first page?

16 A I do.

17 Q And then if you look at the second to the last  
18 page, which is the memorandum.

19 A Which now? The second to the last?

20 Q Second to the last page. Do you see where it  
21 says Roman numeral 6?

22 A Yes.

23 Q And do you see where the last page it has  
24 Mr. Donald's signature signing off on the  
25 memorandum?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

29

1 MR. DRURY: Objection, foundation.

2 A I see a signature that's legible and says  
3 Willie Donald. Now I don't necessarily  
4 recognize it as his.

5 BY MR. TOLBERT:

6 Q Okay. And do you see where it alleges in the  
7 memorandum, the second to the last page, that  
8 part of Mr. Donald's request for relief from  
9 his conviction was your ineffective assistance  
10 of counsel?

11 MR. DRURY: Object to the form and  
12 foundation.

13 BY MR. TOLBERT:

14 Q You can answer the question.

15 A Yes.

16 Q Okay. Were you aware that Mr. Donald claimed  
17 that you were ineffective?

18 MR. DRURY: Object to -- objection  
19 to the foundation.

20 A I don't recall if I was ever specifically  
21 aware. I would have to say from experience  
22 that a pro se -- well, many times an attorney,  
23 post conviction relief attorneys, but  
24 certainly pro se, almost automatically  
25 includes allegations of ineffective assistance



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

30

1 of either trial or appellate or both counsel.

2 BY MR. TOLBERT:

3 Q Okay. So are you saying that they allege  
4 ineffective assistance of counsel and not --  
5 and it not necessarily be true?

6 MR. DRURY: Objection to form,  
7 foundation, especially as it relates to this  
8 specific case.

9 A The alle -- in this case the allegation of  
10 ineffective assistance of counsel, in my view,  
11 is not true. It is part of a formula,  
12 particularly among pro se litigants, that is,  
13 in my experience, the norm rather than the  
14 exception.

15 BY MR. TOLBERT:

16 Q Okay. So it's a claim that a pro se person  
17 would make without there necessarily being any  
18 basis to it.

19 MR. DRURY: Object to the form.  
20 It's vague, calls for speculation.

21 BY MR. TOLBERT:

22 Q You can answer the question.

23 A It would -- yes, because I believe the, I  
24 believe the thinking behind it is to maximize  
25 the opportunity -- well, to win their

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

31

1           petition, but to maximize their opportunity  
2           for hearing and, you know, for their benefit.  
3           So I -- it's -- you know, there's a colloquial  
4           term the writ room, and this would appear to  
5           me, based on my recollection of Mr. Donald,  
6           this would appear to me to have been not  
7           directly prepared, personally prepared by  
8           Mr. Donald, but with the assistance of, for  
9           want of a better term, a lay advocate within  
10          the Department of Corrections.

11    Q       Okay. But we can agree that the last page of  
12           the document appears to have the signature of  
13           Willie Donald.

14                               MR. DRURY: Objection, foundation.

15    A       Well, as I said earlier, I can read that it  
16           says Willie T. Donald.

17    BY MR. TOLBERT:

18    Q       Okay.

19    A       But again, is that his signature or not --

20    Q       Right.

21    A       -- I don't know.

22    Q       And we can agree that you don't know whether  
23           he prepared this document himself.

24    A       I don't know. I -- well, I don't know.

25    Q       Okay. And can we agree that Mr. Donald's

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

32

1 claim that you were ineffective in your  
2 assistance -- you ineffectively assisted him  
3 during the preparation of his case and trial  
4 in June of 1992, that that's not true?

5 MR. DRURY: Object to the form,  
6 foundation, calls for an opinion.

7 A The allegation of ineffective assistance of  
8 counsel during the course of trial, pretrial,  
9 both trials, I maintain he was provided  
10 effective assistance of counsel.

11 BY MR. TOLBERT:

12 Q Okay. So if --

13 A All those phases by myself.

14 Q So if Mr. Donald filed something with the  
15 court and state -- and is stating that you  
16 provided ineffective assistance of counsel,  
17 that would not be true.

18 MR. DRURY: Object to the form,  
19 foundations, calls for an opinion.

20 A He would be making an allegation that I am  
21 denying here.

22 BY MR. TOLBERT:

23 Q Okay. All right. And one of the allegations  
24 that were made in the ineffective assistance  
25 of counsel charge by Mr. Donald was that -- if

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

33

1           you look at the second to the last page, you  
2           see under subsection -- Roman numeral 6,  
3           Subsection C, second paragraph, do you see  
4           where it says: Here Trial Attorney King  
5           failed to object to the lack of elements  
6           instruction for felony murder and for robbery.  
7           Is that true or false?

8    A       I have no recollection.

9                           MR. DRURY: Object to the form,  
10           foundation.

11   BY MR. TOLBERT:

12   Q       Excuse me?

13   A       I have no recollection.

14   Q       Okay. And you see the next sentence where  
15           Mr. Donald says that an attorney's performance  
16           is deficient where he fails to object to an  
17           instruction when the objection would have been  
18           sustained. He goes on to say that you failed  
19           to object to a general murder verdict form.

20                        Do you recall whether or not that was,  
21           in fact, true?

22   A       I don't even know --

23                           MR. DRURY: Object to the form.

24                        COURT REPORTER: Wait. You need  
25           to let him object first and then answer. I

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

34

1 can't take two people talking at the same  
2 time. I didn't get your objection, sir. I'm  
3 sorry.

4 MR. DRURY: Form and foundation.

5 COURT REPORTER: Thank you.

6 BY MR. TOLBERT:

7 Q You were at the trial; right? You -- there  
8 was nobody else that tried this case for  
9 you --

10 A Right.

11 Q -- involving Mr. Donald; correct?

12 A Correct.

13 Q Okay. And you did not have a second chair.

14 A No.

15 Q Okay. So any objections that would have been  
16 made would have been made by you; correct?

17 A Yes.

18 Q Okay.

19 A My statement was, I don't know what a general  
20 murder verdict form is.

21 Q Okay.

22 A I've never heard that.

23 Q And I'm not trying to be facetious, Attorney  
24 King. I'm just trying to lay the foundation  
25 to show that --



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

35

1 A No, I understand. I'm just trying to answer  
2 the question.

3 Q Okay. And was part of your representation of  
4 Mr. Donald, when you met with him, his sister,  
5 and his mother, you requested a speedy trial;  
6 is that correct?

7 A I don't recall.

8 Q Okay. Would you normally -- well, first, what  
9 do you recall Mr. Donald being tried --  
10 charged with, if you recall?

11 A Murder, robbery.

12 Q What would be your habit and practice or is --  
13 do you have a habit or practice -- whenever  
14 you have a person that is charged with murder  
15 and robbery, would it be your practice and  
16 habit to request for a speedy trial?

17 MR. DRURY: Object to the form and  
18 relevance.

19 A There's no -- every case is different.

20 BY MR. TOLBERT:

21 Q When would you in your practice ask for a  
22 speedy trial?

23 A The first --

24 MR. DRURY: Object to relevance.

25 A The first consideration would be whether or

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

36

1           not the defendant was granted bond or not, is  
2           he in custody or not. The -- and everything  
3           attendant to that. The second would be an  
4           assessment of the relative strength or  
5           weakness of the state's case. A third would  
6           be whether or not I think that the passage of  
7           time is likely to be of benefit for the  
8           defendant in terms of negatively impacting  
9           questions of credibility of particularly key  
10          state's witnesses. So there's a variety of  
11          factors that go into consideration on that.

12 BY MR. TOLBERT:

13 Q       Okay. And if you ask for a speedy trial,  
14       would it shorten the time for you to be able  
15       to gather information?

16                   MR. DRURY: Objection, calls for  
17       speculation.

18 A       Probably not if -- if you have -- I mean, you  
19       have to do it by trial. So if you've asked  
20       for a speedy trial, you have to build in that  
21       you're going to have to work more diligently  
22       within a shorter period of time to obtain the  
23       same amount of information.

24 BY MR. TOLBERT:

25 Q       Right. So when one -- when a person asks for

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

37

1 a speedy trial, typically what does that mean  
2 in terms of when the trial would -- is  
3 required to take place by law?

4 A Under Indiana Rule 4, Criminal Rule 4, if a  
5 person's in custody and they make a demand for  
6 they call it an early trial, then it has to be  
7 brought to trial within 70 days of the demand.  
8 There are limited, but there are some  
9 exceptions to that. For example, the state  
10 has a right to ask -- make one request to  
11 continue the case based on witness  
12 unavailability.

13 There's a counter to that the defense  
14 can do by way of stipulating to what their  
15 testimony would be, so that obviates the state  
16 being able to get that delayed, so. But if  
17 you're in custody, the basic rule is, when you  
18 demand an early trial, 70 days from the date  
19 of the demand.

20 Q Okay. And would -- how much time normally  
21 would you have to conduct discovery under a  
22 speedy trial scenario?

23 MR. DRURY: Object to the form,  
24 vague.

25 A Yeah, there's no normal to it. It's --

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

38

1 criminal is much different from civil.

2 BY MR. TOLBERT:

3 Q Okay.

4 A Both sides do not operate under -- you know,  
5 candidly, even if they purport to an issue of  
6 discovery cutoff, it's never honored. I mean,  
7 just discovery in criminal cases is ongoing  
8 and fluid up to and including and sometimes,  
9 sadly, during the course of a trial. So it's  
10 a much different animal than the civil  
11 practice.

12 Q But you have 70 days from the speedy trial  
13 request in order to have the criminal  
14 defendant tried; correct?

15 A We don't have --

16 MR. DRURY: Objection, asked and  
17 answered.

18 A If you make the demand, the trial's got to  
19 commence within 70 days -- some exceptions to  
20 it, or there's a remedy. The remedy can range  
21 from a release on one's own recognizance,  
22 regardless of the offense charged, or it can  
23 end up with discharge of the defendant.  
24 Discharge as used in the rule basically is  
25 dismissal with prejudice.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

39

1 BY MR. TOLBERT:

2 Q And if I understand what you're saying  
3 correctly, within that period you have to  
4 basically get all the discovery that you're  
5 going to get as a criminal defense lawyer in  
6 before that jury trial in order to adequately  
7 represent your client.

8 MR. DRURY: Object to form.

9 A I don't know what you mean by getting  
10 discovery in, I'm sorry.

11 BY MR. TOLBERT:

12 Q What I mean is, whatever depositions that you  
13 need of witnesses, whatever statements you  
14 need of witnesses, you would have to  
15 definitely make sure that you got those things  
16 accomplished before the trial, wouldn't you?

17 A You'd have to get done what you needed to get  
18 done before the trial, whether or not  
19 depositions, whether or not formal witness  
20 statements, that's -- that varies rather  
21 significantly from case to case if you're  
22 going to utilize those vehicles.

23 Q What tool did you use in the Donald case to  
24 get ready for his trial in June of 1992?

25 MR. DRURY: Object to form and



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

40

1 foundation as to "tool".

2 A I don't have --

3 BY MR. TOLBERT:

4 Q Do you know what I mean by "tool"?

5 A -- specific recall.

6 Q Do you know what I will mean by "tool"?

7 A Well, like a deposition, I mean, for example,  
8 but I don't have a specific recall of what  
9 I -- what tools, to use your word, I utilized.  
10 I have a recollection of some of the things I  
11 did.

12 Q I'll rephrase the question. What discovery  
13 methods did you use to get ready for  
14 Mr. Donald's trial in June of 1992?

15 A I don't recall if I used any discovery  
16 methods. I investigated the case. I spoke to  
17 witnesses.

18 Q Deposition --

19 A Probably --

20 Q Deposition -- go ahead.

21 A I can't recall any depositions. It's  
22 relatively, in my practice and my strategy,  
23 it's relatively unusual. It varies case to  
24 case, but --

25 Q What are depositions?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

41

1 A Sworn statements under oath pursuant to notice  
2 and subpoena of either a state's witness or a  
3 third-party, a nonparty witness.

4 Q Like what you're doing today.

5 A Like what you're doing today.

6 Q Okay. And depositions, you would agree with  
7 me, are a helpful tool in getting information  
8 that is relevant in a case to allow you to  
9 represent your client.

10 MR. DRURY: Object to the form,  
11 foundation.

12 BY MR. TOLBERT:

13 Q Do you understand the question?

14 MR. DRURY: Calls for an opinion.

15 A They can be.

16 BY MR. TOLBERT:

17 Q Okay.

18 A They're not always.

19 Q Okay. And when would a deposition not be  
20 helpful?

21 A Well, one example would be a deposition where  
22 I can obtain the same information without  
23 letting my opponent, opposing counsel, know  
24 that I'm getting the information.

25 Q Okay.

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

42

1     A     Another can be, it's not helpful if I take a  
2           deposition of a witness that I, based on my  
3           investigation, believe to be flighty, shall we  
4           say, or engaging in a high-risk lifestyle,  
5           that may not be around by the time the trial  
6           comes. If I've taken their deposition, then  
7           I've opened it up for that to be prior  
8           recorded testimony available if it turns out  
9           they'd be unavailable at trial. You know,  
10          those are examples in the criminal practice.

11                 You don't do -- even though you can, you  
12          don't do depositions or if you do, the danger  
13          is -- and you think the witness may not be  
14          around come trial time, then at your peril you  
15          have to conduct your deposition in a complete  
16          manner as though you have to anticipate, well,  
17          if this comes in at trial, I would have -- you  
18          know, I'd have to explore everything, which,  
19          in which case, you're giving up in front of  
20          your opponent, as well as to the witness, what  
21          your strategy and tactics are going to be in  
22          conducting a cross-examination of a state's  
23          witness.

24                 So it's, it's case by case, who is the  
25          witness. Another example is with police

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

43

1 officers in a criminal practice. Police  
2 officers are -- with very, very few  
3 exceptions, are wedded to their reports. And  
4 so in many cases, not all, but in many cases  
5 you are going to have the benefit of being  
6 very restraining in what an officer is going  
7 to say or not say based upon their reports.

8 So you may -- and then I frequently will  
9 not take a deposition of a police officer in a  
10 criminal defense case, again, in that  
11 particular case. I'm not worried about the  
12 officer taking off, but I am worried about  
13 them going to school on what the questions in  
14 the deposition are and making adjustments  
15 accordingly come to trial testimony.

16 Q When would a deposition be helpful for you  
17 when you're preparing for a criminal defense  
18 trial?

19 MR. DRURY: Object to the form as  
20 vague, calls for speculation.

21 BY MR. TOLBERT:

22 Q You can answer the question.

23 A In the case of an expert, for example, a  
24 high -- relatively high frequency, in a case  
25 where the cause of death is of some question,

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

44

1       a pathologist, you know, will frequently, in a  
2       murder case, will frequently have their  
3       testimony at the petition to lift the bail and  
4       have the transcript of that and then  
5       subsequently take a deposition of the  
6       pathologist.

7               We sometimes take a deposition to -- if  
8       we think the witness is particularly weak, in  
9       an effort to get the prosecutor that's  
10      assigned to the case to sit there and look and  
11      listen to how bad their witness is in order to  
12      drive a dismissal of the case or concessions  
13      for a plea agreement. You know, so there's  
14      all sorts of different vehicles.

15             The other is, another vehicle we have is  
16      getting transcripts. If we do a petition to  
17      lift the bail for example, those are fairly  
18      complete transcripts, you know, fairly early  
19      in the case that lock people in, lay witness  
20      and police officer alike. Any -- if you do  
21      pretrial motions, most notably motions to  
22      suppress, you'll get those transcripts as  
23      well.

24    Q       When you say a witness is weak, what do you  
25       mean if the witness is weak, you would take a



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

45

1 deposition?

2 A Well, they're a bad witness. You know, you  
3 can tell from, you can tell from -- a lot of  
4 times you read the account first given to the  
5 first responding officer, then you look at the  
6 more formal statement that they made to a  
7 detective, you can already see discrepancies  
8 or incongruities between those two. You get  
9 input sometimes from either your client or  
10 people from the client's family that know, you  
11 know, that witness, or you'll get information  
12 that will lead you to conclude this is -- this  
13 witness is a shaky witness for the state.

14 Q So depositions can be used when you have a  
15 weak witness to flush out maybe  
16 inconsistencies in their story.

17 MR. DRURY: Object to the form,  
18 misstates his testimony.

19 A Well, can it be? Yes, it can be. But, again,  
20 part of the -- part of the reality of criminal  
21 defense compared to civil work is, you know,  
22 the whole case isn't scripted the way I  
23 perceive civil cases are, and part of that is  
24 to the advantage of the defense. You don't --  
25 you want to, where you can and ethically

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

46

1           certainly, you don't want to -- if you have a  
2           case that you believe is likely, reasonably  
3           likely to go to trial, you do not want to give  
4           away any more indication of your strategy than  
5           you have to for the benefit of your client.

6   Q       And that trial strategy that you just  
7           described, would you agree with me that the  
8           drawback of that could be potentially not  
9           discovering information that could help you?

10                       MR. DRURY: Object to the form.

11 BY MR. TOLBERT:

12 Q       You can answer the question.

13                       MR. DRURY: Calls for speculation.

14 A       Could it be? Yes, it could be.

15 BY MR. TOLBERT:

16 Q       What was that?

17 A       It could be.

18 Q       Okay. And I'm going to show you what's been  
19       marked as Defendant's Exhibit 2.

20                       (Defendant's Exhibit No. 2 marked  
21                       for identification.)

22 BY MR. TOLBERT:

23 Q       Defendant's Exhibit 2, Attorney King, could  
24       you identify Defendant's Exhibit 2 for the  
25       record, please?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

47

1 A It's --

2 MR. DRURY: Object to foundation.

3 A It's a three-page copy of a motion of a notice  
4 of alibi, a motion to compel discovery,  
5 production of Brady material, and supplemental  
6 discovery response.

7 BY MR. TOLBERT:

8 Q Okay. And did you file this and when?

9 A It looks like my signature, and the file stamp  
10 says May 27th, 1992.

11 Q Okay. Do you have any -- well, first, is this  
12 one of the documents that Attorney Drury went  
13 over with you when you met with him today?

14 A I don't know. I don't remember.

15 Q Okay. And do you recall, have any independent  
16 recollection, not if you reviewed this  
17 document, of filing this?

18 A No.

19 Q Okay. When would you file a -- I mean, what  
20 is the purpose of a notice of alibi filing?

21 A Well, you --

22 MR. DRURY: Object to the form.

23 A If you're going to offer -- I'm sorry.

24 BY MR. TOLBERT:

25 Q Go ahead, you can answer the question.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

48

1 A If you're going to offer an defensive alibi,  
2 you have to give notice.

3 BY MR. TOLBERT:

4 Q Okay. What is an alibi?

5 A An alibi is presenting evidence that the  
6 defendant was at a place other than the place  
7 indicated in the state's evidence at the time  
8 of the crime.

9 Q And in laymen's terms, you would agree with me  
10 that, basically, that means that he couldn't  
11 have -- he couldn't have done the crime that  
12 he's being charged with because he was  
13 somewhere else.

14 A Yeah. Yes.

15 Q Okay. All right. And would you agree with me  
16 that that was one of the defenses, one of the  
17 main defenses that you raised for Mr. Donald  
18 during his trial in 1992?

19 MR. DRURY: Object to the form.

20 BY MR. TOLBERT:

21 Q You can answer the question.

22 A As to at least one of the allegations against  
23 him, yes.

24 Q And which allegation did the alibi defense go  
25 to?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

49

1 A I don't know, whichever one was covered by the  
2 time he was out shopping for cars with his  
3 sisters and his brother-in-law or her  
4 boyfriend, or whatever it was.

5 Q And based off of what you recall, was that  
6 part of the alibi defense that Mr. Donald at  
7 the time that the crimes that he was charged  
8 with were committed, that he was actually out  
9 shopping for cars?

10 A I don't recall the --

11 MR. DRURY: Object to the form.

12 A I'm sorry.

13 BY MR. TOLBERT:

14 Q You can answer the question.

15 A I don't recall that it was crimes, plural, as  
16 opposed to crime.

17 Q Okay.

18 A But at least with respect to one of the  
19 allegations against him, he and his sisters  
20 indicated that he was shopping for a car with  
21 them.

22 Q Okay. And I know I'm asking some very basic  
23 lined up questions, but I'm trying to make  
24 sure the record is clear.

25 So when you file a notice of alibi, that

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

50

1 is putting the prosecution on notice that your  
2 defense is that your client could not have  
3 been the person that committed the crime  
4 because he was somewhere else.

5 A Yes, that's the purpose --

6 Q Okay.

7 A -- of the notice, but it triggers under  
8 Indiana law, and probably under other states  
9 too, that the state then has a right to amend  
10 its charge.

11 Q Okay.

12 A They can even change the date and time based  
13 upon that notice. You know, so you can get  
14 into kind of a tug-o-war over that.

15 Q Okay.

16 A Because otherwise -- but that does require  
17 then the state -- a general allegation that is  
18 within the statute of limitations is, in a  
19 typical case, fine.

20 Q I'm sorry, I didn't get that last part.

21 A I said in a typical case, that's fine, that's  
22 appropriate.

23 Q Okay, got you.

24 A Unless a notice of alibi. That triggers a  
25 requirement on the part of the state to be



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

51

1 more precise as to their allegation.

2 Q Okay. And based off of this Exhibit 2, which  
3 was your notice of alibi defense to the  
4 prosecutor's office filed on May 27th, 1992,  
5 you would agree with me that one of, one of  
6 the defenses that you were raising for  
7 Mr. Donald was that, basically, he was, he was  
8 another place --

9 A Yes.

10 Q -- at the time the crimes occurred.

11 A Again, crime.

12 Q Or crime.

13 A Yes.

14 MR. DRURY: Object, asked and  
15 answered.

16 BY MR. TOLBERT:

17 Q And if you look at page 2 of your notice of  
18 alibi, do you see paragraph 2 here where it  
19 says: The defendant believes that there  
20 exists the following evidence which tends to  
21 exculpate the defendant. And then you go  
22 through a couple of --

23 A Uh-huh.

24 Q -- things. Do you see that?

25 A Yes.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

52

1 Q Okay. And one of the items that you mention  
2 was that a person -- the person of one Loren  
3 Thompson, an individual known to the state, is  
4 a person fitting the description of the  
5 perpetrator of the offenses here at issue.

6 Was it part of your defense of  
7 Mr. Donald in 1992 that not only was he not --  
8 could not have committed the crimes because he  
9 had, quote-unquote, an alibi defense, but that  
10 there was another person that committed the  
11 crime, being this Mr. Thompson?

12 MR. DRURY: Object to the form.

13 A Yes.

14 BY MR. TOLBERT:

15 Q Okay. And that was a theory that you were  
16 allowed to present to the jury once this  
17 matter was tried in 1992?

18 A I don't recall that.

19 Q Okay. Now, do you recall ever offering  
20 evidence that conclusively established in 1992  
21 that Mr. Thompson was, in fact, the individual  
22 that committed the crimes of which Mr. Donald  
23 was charged with?

24 A I don't have a recollection, but I would  
25 caution that me conclusively proofing anything

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

53

1 as a defense attorney is probably not going to  
2 happen.

3 Q Okay. All right.

4 A It's not our burden.

5 Q Okay. Well, I'll rephrase the question then.

6 Do you remember it being shown in 1992 when  
7 the jury trial of Mr. Donald took place that  
8 Mr. Thompson actually was the perpetrator of  
9 the crimes of which Mr. Donald was charged?

10 MR. DRURY: Object to the form.

11 BY MR. TOLBERT:

12 Q You can answer the question.

13 A Yeah, I don't know. Shown to whom?

14 Q To the jury.

15 A I don't recall.

16 MR. DRURY: Objection.

17 A I don't recall the trial.

18 BY MR. TOLBERT:

19 Q You don't recall?

20 A No, I don't know what --

21 Q Okay.

22 A -- what was or was not put in during the  
23 course of the trial.

24 Q Now, would you normally put down -- we already  
25 talked about the alibi defense and this

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

54

1 notice, and now we've talked about

2 Mr. Thompson.

3 Would you put down something that you  
4 don't offer at trial?

5 MR. DRURY: Object to the form.

6 A Yes.

7 BY MR. TOLBERT:

8 Q Excuse me?

9 A Yes.

10 Q Okay. And why would you do that?

11 A In order to -- in order to, in part, to set up  
12 the prosecutor. If I believe the prosecutor  
13 is sandbagging Brady material, I want to be on  
14 record so there's no question, as much as  
15 possible, that that's what -- that's what  
16 happened, and to build in for my client,  
17 whether during the course of the trial -- or  
18 if the outcome is not successful, after the  
19 trial -- a means and manner by which to get  
20 the conviction set aside. In this particular  
21 case, the prosecutor assigned to the case had  
22 a reputation for -- had a reputation for  
23 engaging in that kind of -- he wasn't  
24 well-trusted.

25 Q What do you mean by that?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

55

1 A In terms of honoring his obligation to turn  
2 over exculpatory material.

3 Q Okay. And do you see on page 2 of Exhibit 2,  
4 Subsection B, where it says that the defendant  
5 believes that there exists the following  
6 evidence which tends to exculpate the  
7 defendant, and you have fingerprint evidence  
8 and/or other physical evidence negating the  
9 defendant's involvement in these offenses.

10 Do you remember that being a part of  
11 your defense that you presented for Mr. Donald  
12 in 1992?

13 A I don't remember, but I'm assuming that the  
14 absence of fingerprints would have been  
15 mentioned at some juncture to the jury.

16 Q Okay.

17 A In an identification case.

18 Q Okay. So the fact that this was listed as  
19 your maybe habit and practice, that this would  
20 have gone -- would have been something that  
21 most likely would have come up if there was an  
22 absence of fingerprints.

23 A Well, if there were no fingerprints, if there  
24 was no evidence of fingerprints presented,  
25 then in an identification case, as a general

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

56

1 proposition, that would be something that,  
2 yes, I believe would be pointed out at some  
3 point in the proceedings.

4 Q Okay.

5 A Perhaps not until closing argument. But, I  
6 mean, the absence of any kind of corroborating  
7 physical evidence to eyewitness testimony  
8 would be something that would factor into the  
9 trial strategy and I assume -- and I would  
10 think typically the execution. I don't have a  
11 specific recall here, but --

12 Q Okay. And just so we're clear, when you say  
13 pointed out -- whenever we're talking about  
14 this I want to make sure we're not talking in  
15 a vacuum.

16 When you're saying pointed out and when  
17 I'm saying showing, is it fair -- can we agree  
18 that what we're talking about is being shown  
19 or pointed out to a jury?

20 A Could.

21 MR. DRURY: Object to the form.

22 BY MR. TOLBERT:

23 Q Okay.

24 A But not necessarily exclusively. It may be  
25 relevant for the judge, you know, so.



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

57

1 Q Okay. But it would be used at trial.

2 A Maybe.

3 Q Okay. Or if you decide not to use it.

4 MR. DRURY: Object to the form.

5 A Yeah, I can't follow you on that form.

6 BY MR. TOLBERT:

7 Q Okay. I'm sorry, I didn't get that last part.

8 A I can't follow you on that.

9 Q Well, you're saying the lack of  
10 fingerprinting.

11 A Yeah.

12 Q And you're saying you could use that as a  
13 theory.

14 A Could.

15 Q Or not, you said, or possibly not.

16 A Yes.

17 Q And you said that maybe it wouldn't be put  
18 before a jury. It would be put before a  
19 judge.

20 A Could be.

21 Q But all of that would take place in the  
22 concept of a trial; correct?

23 A It could.

24 Q Okay. And if you look at the last part of  
25 page 2, you have defendant's additional

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

58

1 witnesses, and you have a Barbara Price listed  
2 and an Ethel Crouch.

3 And do you have any independent  
4 recollection of what those two witnesses  
5 were -- what you believe that they were going  
6 to offer in your trial in which you defended  
7 Mr. Donald in 1992?

8 A I don't. I mean, I recall that Mr. Donald at  
9 the time of the offenses alleged was -- he was  
10 employed by the Goldblatt's. I think that was  
11 open then in the Village Shopping Center.

12 Q Okay.

13 A But specifically what these witnesses would  
14 say or not, I -- I don't know.

15 Q Okay. I'm going to show you what's been  
16 marked as Defendant's Exhibit 3.

17 (Defendant's Exhibit No. 3 marked  
18 for identification.)

19 BY MR. TOLBERT:

20 Q Defendant's Exhibit 3 appears to be a filing  
21 that you made, would have been on June 1st,  
22 1992, a pleading marked Defendant's Additional  
23 Witnesses. Do you see that?

24 A Yes.

25 Q Okay. And is this a document that you -- that

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

59

1 is your signature, is it not, sir?

2 A Yes.

3 Q And is this a document that you would  
4 typically file with the court to provide the  
5 court and the prosecutor information about the  
6 witnesses that you potentially might call at  
7 trial?

8 A Yes. You have to make sure that by the time  
9 you're prepared to engage in jury selection  
10 that, and so far is known, the names of  
11 everybody that's there so the court can read  
12 off those names to the potential jurors.

13 Q Do you have any recollection as you sit here  
14 today of what these witnesses -- what you  
15 planned on having these witnesses testify to  
16 in your trial in 1992?

17 MR. DRURY: Objection, foundation,  
18 assumes facts not in evidence.

19 A No, I see references to car dealerships, so  
20 I'm guessing to the alibi.

21 BY MR. TOLBERT:

22 Q Okay.

23 A The Chandra Goodman, I don't know who that --  
24 the name kind of rings a bell, but I don't  
25 know who that is.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

60

1 Q Okay. And I know, as far as a lot of  
2 documents in front of you, the last document  
3 that we went over that would have had your  
4 notice of alibi, that document was filed on  
5 May 27th, 1992. That's Exhibit 2. And then  
6 Exhibit 3 was your defendant's additional  
7 witness -- witnesses filing where you listed  
8 five additional witnesses. That would have  
9 been filed on June 1st, 1992.

10 Do you recall what, if anything, would  
11 have happened in terms of what your firm would  
12 have done to provide any investigative  
13 measures to get your case ready for Mister --  
14 to defend Mr. Donald in 1992?

15 A You have to repeat that question. I don't  
16 know what --

17 Q I'll see if I can rephrase it. Between the  
18 time you filed your notice of alibi until when  
19 you filed your additional witnesses list, do  
20 you recall taking any steps in between those  
21 two periods, investigative steps, that would  
22 help you get ready for the trial involving  
23 Mr. Donald?

24 MR. DRURY: Object to the form.

25 A Do I recall specifically? No. But you're

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

61

1 getting ready for trial, so you're preparing  
2 the case for trial.

3 BY MR. TOLBERT:

4 Q Okay. What --

5 A Now what specifically I was doing I don't  
6 know, but you're getting ready for trial.

7 Q Okay. And what normally is your habit? What  
8 would you normally do?

9 A It depends on the case.

10 MR. DRURY: Object to the form.

11 BY MR. TOLBERT:

12 Q Excuse me?

13 A It depends on the case, you know, what needs  
14 to be done.

15 Q In a murder case like Mr. Donald's case, what  
16 would you do?

17 A Murder cases --

18 MR. DRURY: Object to the form,  
19 calls for speculation.

20 A Murder cases are as varied as any other cases.  
21 I mean, it depends on what the case is.

22 BY MR. TOLBERT:

23 Q Would you talk to the victims?

24 MR. DRURY: Object to the form.

25 A Well, I did talk to the -- at least one

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

62

1           alleged victim.

2   BY MR. TOLBERT:

3   Q       Which one did you talk to?

4   A       The female police officer.

5   Q       Okay. Did you talk to any other of the other  
6           victims?

7   A       I don't recall.

8   Q       Okay. Would that be something that you would  
9           do to properly prepare for trial?

10                   MR. DRURY: Objection, calls for  
11                   speculation, foundation.

12   A       It depends on what information I already had,  
13           was there a need to do so.

14   BY MR. TOLBERT:

15   Q       Okay. Do you recall talking to a Rhonda  
16           Williams before trial?

17   A       I don't recall.

18   Q       Do you know who Rhonda Williams is?

19   A       I believe she's one of the complaining  
20           witnesses in the case.

21   Q       All right. Do you recall Rhonda Williams --  
22           you don't recall talking to her.

23                   MR. DRURY: Objection.

24   A       I don't recall.

25                   MR. DRURY: Misstates his



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

63

1 testimony.

2 BY MR. TOLBERT:

3 Q Okay. I'm sorry, I didn't get that.

4 A I don't recall.

5 Q Okay. I'm going to show you what has been  
6 marked as Defendant's Exhibit 4.

7 (Defendant's Exhibit No. 4 marked  
8 for identification.)

9 BY MR. TOLBERT:

10 Q Defendant's Exhibit 4, which I've just handed  
11 you, is a motion for order directing release  
12 of information that you would have filed on  
13 June 24th, 1992. Do you see that?

14 A Yes.

15 Q Okay. And this appears to be a request for  
16 release of information regarding the death of  
17 LaVelle Thompson, and you see paragraph 1  
18 where it says, counsel -- that is your  
19 signature; right? Correct?

20 A Yes.

21 Q On this document? Okay. And you see in  
22 paragraph 1 of the motion for order directing  
23 release of information, it states that counsel  
24 is investigating the circumstances of the  
25 death of LaVelle Thompson in so far as it may

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

64

1 reveal evidence of exculpatory as to the  
2 defendant herein. Do you see that?

3 A Yes.

4 Q Okay. And if you look at the last page of  
5 this exhibit, there's an order that grants  
6 your motion, and it directs the Lake County  
7 Coroner's Office to release to you information  
8 within its care and custody and control  
9 pertaining to the death of LaVelle Thompson.

10 A Yes.

11 Q Okay? Now, in light of this filing, would you  
12 agree with me that you would have had -- the  
13 court would have ordered information to be  
14 produced to you regarding, from the coroner's  
15 office, regarding LaVelle Thompson before your  
16 jury trial?

17 MR. DRURY: Object to the form.

18 A Well, I don't know if this is before or after  
19 the jury trial.

20 BY MR. TOLBERT:

21 Q Well, why would you file a motion for release  
22 of information after, after the jury trial?

23 A For a related motion to correct errors, a  
24 timely motion to correct errors, a motion for  
25 a new trial.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

65

1 Q Do you recall whether or not that was part of  
2 any motion to correct error that you would  
3 have filed on behalf of Mr. Donald?

4 A I don't recall.

5 Q Okay. Do you recall having information from  
6 the coroner's office regarding LaVelle  
7 Thompson as part of your defense of Mr. Donald  
8 in June of 1992?

9 MR. DRURY: Objection, asked and  
10 answered.

11 A From the coroner's office?

12 BY MR. TOLBERT:

13 Q Yes.

14 A I don't recall.

15 Q Would you agree with me that there was  
16 nothing, based on the exhibit that I just  
17 handed you, there was -- well, I'll ask it  
18 this way: Is there anything that you can  
19 recall that the City of Gary Police Department  
20 that -- what they -- that they did anything  
21 that would have made it difficult for you to  
22 get any information regarding LaVelle  
23 Thompson?

24 MR. DRURY: Object to the form,  
25 foundation, calls for speculation, incomplete

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

66

1           hypothetical.

2    A       That they would have made it difficult for me  
3           to get?

4    BY MR. TOLBERT:

5    Q       Uh-huh.

6    A       Well, if they didn't comply with -- if they  
7           didn't comply with the earlier request as an  
8           agent of the state to provide information  
9           regarding other suspects for any offenses  
10          alleged against Mr. Donald, that would be  
11          making it difficult.

12   Q       Okay.

13   A       I'm not saying they did or didn't.

14   Q       Okay. That's my question.

15   A       You're asking me to -- do I -- yes, if they  
16          were covering up, if they weren't -- if they  
17          had an indication of him as a suspect, this  
18          LaVelle Thompson -- I think in an earlier  
19          document, probably my bad, I had the name  
20          Loren Thompson.

21   Q       That's right.

22   A       I got that information from somewhere.

23   Q       Right.

24   A       And I -- just thinking back, you know, in  
25          general, right, I -- there's a reasonable

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

67

1           likelihood that I may have gotten that from  
2           some source inside the police department. I  
3           didn't just make the name up. So if they  
4           were -- if they weren't providing that, yeah,  
5           then they did something to -- they didn't do  
6           something they had an obligation to do.

7    Q       Did you -- do you have any independent  
8           knowledge as you sit here today that that was,  
9           in fact, the case?

10   A       The independent knowledge as I sit here today  
11           regarding this fellow Thompson was having a  
12           grainy black and white photograph purportedly  
13           of him that I recall being interested in terms  
14           of its comparison to, A, my client and, B, the  
15           physical descriptions given by one or more of  
16           the complaining witnesses in these various  
17           robberies. Where I got the photo or the name,  
18           I have no recollection, but I do remember  
19           there being a photograph purportedly of this  
20           Thompson person.

21   Q       Okay. When this case was tried, when you  
22           defended Mr. Donald in 1992 for the crimes of  
23           which he was charged with, do you recall  
24           whether or not you were able to show, based on  
25           the information that the court would have

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

68

1           ordered be produced to you by the coroner's  
2           office, that LaVelle Thompson was, in fact,  
3           the person that committed the crimes?

4                       MR. DRURY: I'll object to the  
5           form, foundation, misstates his testimony  
6           about the court's order.

7 BY MR. TOLBERT:

8 Q       You can answer the question.

9 A       No, I don't.

10 Q       No, you don't what?

11 A       No, I don't in response to your question. No,  
12       I don't remember.

13 Q       Okay. Do you use -- I'm assuming you use  
14       subpoenas when you get ready for trial as well  
15       to secure witness trial testimony?

16 A       I do.

17 Q       Okay. Do you remember, before I show you some  
18       documents, independently who you would have  
19       subpoenaed before Mr. Donald's trial?

20 A       No.

21                       (Defendant's Exhibit No. 5 marked  
22       for identification.)

23 BY MR. TOLBERT:

24 Q       I'm going to show you what has been marked as  
25       Defendant's Exhibit 5. There you go, sir.



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

69

1 Defendant's Exhibit 5 is a subpoena duces  
2 tecum that would have been sent by your office  
3 to the Department of Bureau of Identification,  
4 at 2293 North Main Street in Crown Point,  
5 Indiana.

6 It requests the production of any  
7 photographs in their possession of an Ivory  
8 Maxwell. Do you remember who Ivory Maxwell  
9 is?

10 A No.

11 Q Do you remember why you would have been  
12 requesting this information from the Bureau of  
13 Identification?

14 MR. DRURY: Just object to the  
15 form and foundation.

16 A I don't remember.

17 BY MR. TOLBERT:

18 Q Do you recall requesting, outside of this  
19 subpoena, any other records or information  
20 that you would have subpoenaed from a  
21 nonparty?

22 MR. DRURY: Object to the  
23 foundation.

24 BY MR. TOLBERT:

25 Q You can answer the question.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

70

1 A Well, I mean, I don't know -- in the course of  
2 questioning somebody or investigating, might  
3 part of the investigation have been asking  
4 them if they had any material or photographs,  
5 or whatever. I -- I mean, I don't have a  
6 recollection of it, but I could envision that  
7 would be, that would be possible.

8 Q And I think we talked about the use -- the  
9 helpfulness of depositions. We can agree that  
10 subpoenas are a discovery mechanism that  
11 allows for you to gather information that  
12 could help your client.

13 A It can be.

14 Q Okay. And as you sit here today, you don't  
15 recall what documents, if any, you subpoenaed  
16 on behalf of Mr. Donald before his trial?

17 A No.

18 Q Do you even recall this subpoena?

19 A No.

20 (Defendant's Exhibit No. 6 marked  
21 for identification.)

22 BY MR. TOLBERT:

23 Q I'm going to show you what has been marked as  
24 Defendants's Exhibit 6. There you go, sir.  
25 Defendant's Exhibit 6 appears to be

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

71

1 information that would have been sent from  
2 your office to a Sonya Thompson (sic), a  
3 subpoena, if you look at the last -- about the  
4 third from the last page?

5 A You want me to look at the subpoena itself?

6 Q Yes.

7 A Okay.

8 Q Do you recall sending this subpoena?

9 A No.

10 Q Okay. Do you know who Sonya Thomas is?

11 A No.

12 Q Okay. Do you see the last, the last -- second  
13 to the last page?

14 A Yes.

15 Q And do you know whose handwriting that is?

16 A No.

17 Q Okay. Is that your address that would have --  
18 that would have been your address at the time  
19 of your practice?

20 A Yeah. South Lake Street, but, yeah, close  
21 enough.

22 Q And what I'm talking about is, this is -- the  
23 Bates stamp is DON 000110.

24 A Yeah.

25 Q Okay. Do you recall talking to a Sonya Thomas

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

72

1 before the -- Mr. Donald's trial in  
2 preparation?

3 A No.

4 Q Do you recall paying the requisite subpoena  
5 fees to secure Mrs. Thomas's appearance at  
6 Mr. Donald's trial?

7 A I don't. I mean, I'm looking at the exhibit.  
8 There appears to be a copy of a check from our  
9 firm.

10 Q Okay.

11 (Defendant's Exhibit No. 7 marked  
12 for identification.)

13 BY MR. TOLBERT:

14 Q I hand you what has been marked as Defendant's  
15 Exhibit 7. Defendant's Exhibit 7 is a  
16 subpoena sent by your office to a Mary Banks.  
17 Do you see that?

18 A Yes.

19 Q Do you recall -- you talked about Mary Banks  
20 before. I think you called her Corporal  
21 Banks.

22 A I don't think -- I think I talked about  
23 speaking to a Gary policewoman.

24 Q Right. Okay. What do you recall -- do you  
25 recall whether or not Mary Banks was that Gary

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

73

1           policewoman that you spoke to?

2     A       The name rings a bell. It could well be.

3     Q       Okay. And what is your recollection of what  
4           information that Mary Banks would have had  
5           that would have assisted you in defending  
6           Mr. Donald?

7     A       She and/or her daughter were, as memory serves  
8           me, victims in an uncharged case, but that was  
9           occurring in the same locale at the same time,  
10          and she -- I recall interviewing her at the  
11          police department. And in that -- in the  
12          course of that discussion she was somewhere  
13          between not identifying or being extremely --  
14          it had to do with a -- her statement suggested  
15          my client was not the person that perpetrated  
16          that. Now, how precise that recollection is I  
17          don't know, but that's what I recall when I  
18          interviewed her at the police station and  
19          that's what, my best recollection is, would  
20          have prompted me to put her under subpoena.

21    Q       So calling her would have, essentially, helped  
22           the defense of Mr. Donald.

23    A       Yes.

24    Q       Okay. And do you recall whether or not she  
25           testified?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

74

1 A I recall that she did not testify.  
2 Q Okay. And did you release her from her  
3 subpoena?  
4 A I did.  
5 Q Okay. And when did you do that?  
6 A The morning of -- the morning she appeared at  
7 the courthouse in response to the subpoena.  
8 Q Now when you said you talked to her at the  
9 police station, do you remember when that was  
10 in relation to the trial?  
11 A No. During preparation.  
12 Q Okay. And at that time she told you that --  
13 she gave you information that would have been  
14 helpful to Mr. Donald.  
15 A Yes.  
16 Q Okay. And then you released her from her  
17 subpoena right at the trial or before the  
18 trial?  
19 A I believe the trial was in -- during the  
20 trial.  
21 Q Okay. And why did --  
22 A She appeared and -- she appeared on whatever  
23 date she was responding to the subpoena.  
24 Q Why did you release her?  
25 A Because she wanted to speak with me. We went



**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

75

1           into one of the conference rooms, and she  
2           proceeded to inform me that she was getting  
3           pressure from the department, I know for sure.  
4           Whether or not it was from Bruce Outlaw in  
5           particular, I'm, I'm -- I don't know, but from  
6           the department, and that she -- she just told  
7           me, she goes, I'm, you know, I'm not going to  
8           help you on the stand. I mean, that's what  
9           she conveyed to me. I can't -- that's not a  
10          quote. And so I, rather than run the risk of,  
11          you know, God knows what she was going to say  
12          and getting it in the prosecutor's hands, I  
13          released her from the subpoena and sent her on  
14          her way.

15        Q       Okay. Did you -- would you agree with me that  
16                had you -- you could have taken her deposition  
17                when you met her at the police station;  
18                correct?

19        A       No, actually, I couldn't.

20        Q       Why not?

21        A       Because we would have to -- in a criminal case  
22                under local rules, we have to do depositions  
23                at the prosecutor's office.

24        Q       Right. But my point is, you could have taken  
25                that deposition, no matter where it would have

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

76

1 taken place; correct?

2 A I could have taken her deposition.

3 Q Okay. And if you would have taken her  
4 deposition, at the time you talked to her and  
5 she gave you that information that would have  
6 been favorable, her testimony would have been  
7 locked in; correct?

8 A No.

9 Q Okay. And why not?

10 A She could recant.

11 Q Right. And then you could have impeached her  
12 with her deposition; correct?

13 A Could have impeached her, but at the time, if  
14 memory serves me, that wouldn't have come in  
15 as substantive evidence, and she's a -- she's  
16 an experienced police officer. You know,  
17 candidly, God knows what else she would say.

18 Q And --

19 A If she was put off -- if she was -- given what  
20 was motivating her to back away from what she  
21 had told me and if she, in fact, was fronted  
22 off in any kind of public setting, including a  
23 trial, that in fact she had given me that  
24 information before, given what she was doing  
25 already, I, you know, I shutter to think of

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

77

1           what else she might have said or done in the  
2           presence of the jury. I mean --

3   Q       You would have gotten in front of the --

4   A       It was a problem.

5   Q       You would have gotten in front of the jury  
6           that the City of Gary police was putting  
7           pressure on her not to testify, wouldn't you?

8   A       No, no, I wouldn't have. You think she'd  
9           testify to that?

10   Q      Well --

11   A      Do you think she would sit there in front of  
12           the prosecutors and the case officer in an  
13           open court and say that they -- she was  
14           pressured for that?

15   Q      Well, she --

16   A      That's what she told me privately. She would  
17           never, in my opinion, she would never have  
18           said that --

19   Q      Well, did you tell --

20   A      -- in the courtroom.

21   Q      Did you tell anybody when she told you that  
22           the City of Gary -- that's a, that's a  
23           serious --

24   A      I'm sure I did.

25   Q      That's a serious violation, isn't it?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

78

1 A What is?

2 Q That the police department is basically

3 witness tampering.

4 A Did I tell anybody during the trial?

5 Q Yeah.

6 A No.

7 Q Okay. And when was, when was the first time

8 you ever told anybody what you just told us

9 today?

10 A Oh, I'm sure I had conversations with my

11 partner.

12 Q You never reported it?

13 A No. Report it to who?

14 Q To the police department.

15 A To the police department that --

16 Q Yeah.

17 A -- existed then?

18 Q Uh-huh. Or the prosecutor?

19 A To the --

20 Q Isn't that a crime?

21 A To Mr. Benson?

22 Q Isn't, isn't witness tampering a --

23 A It is.

24 Q -- crime, sir? Okay.

25 A It is.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

79

1 Q So you could have reported it to the  
2 prosecutor, couldn't you?

3 A I could have.

4 MR. DRURY: Objection, calls for  
5 speculation.

6 A I could have.

7 BY MR. TOLBERT:

8 Q And did you?

9 A I did not.

10 Q Okay. And when -- who specifically did you --  
11 what you just told us, that Mrs. Banks said  
12 that she was getting pressured by somebody at  
13 the police station, outside of your partner,  
14 who else did you tell that to?

15 A I'm sure over --

16 MR. DRURY: Objection to the --  
17 object to the form, calls for hearsay.

18 A I'm sure over time several of my colleagues,  
19 probably Mr. Vanes, who later handled the PCR  
20 for Mr. Donald.

21 BY MR. TOLBERT:

22 Q Did you testify at the post conviction relief  
23 hearing?

24 A I did.

25 Q Did you -- do you recall telling -- testifying

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

80

1 at the post conviction relief hearing that you  
2 don't know why she ended up changing her  
3 testimony?

4 A I don't recall that.

5 Q Is it possible that you could have said that?

6 A Sure. Anything is --

7 Q Okay.

8 A -- possible.

9 Q Okay. So are you for certain whether or not  
10 she actually told you that or are you --

11 A That she told me that she was --

12 Q Yeah.

13 A -- being pressured? I'm sure of it, because  
14 she was backing out of a conversation she had  
15 had at the police station with me. That's  
16 what prompted me to subpoena her --

17 Q Okay.

18 A -- as a police officer from the same  
19 department.

20 Q So when you testified at the post conviction  
21 relief hearing that you didn't know why she  
22 backed out, you were not testifying truthfully  
23 under oath?

24 MR. DRURY: Objection, assumes  
25 facts not in evidence. You haven't shown him



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

81

1 anything --

2 MR. TOLBERT: I will.

3 MR. DRURY: -- that he testified  
4 to.

5 MR. TOLBERT: I will.

6 A No, I mean, I --

7 MR. DRURY: It's improper  
8 impeachment.

9 MR. TOLBERT: Well, I'm asking him  
10 the question because he said it's possible.

11 A I would always do my best in any setting of  
12 telling the truth.

13 BY MR. TOLBERT:

14 Q So it's possible you could have said under  
15 oath that you don't know why Mary Banks  
16 decided not to testify and that's inconsistent  
17 with what you're saying today.

18 A Sure.

19 MR. DRURY: Object to the form.

20 BY MR. TOLBERT:

21 Q So you're being inconsistent.

22 MR. DRURY: Object to the form.

23 A It's, it's entirely possible, except that  
24 what's transpired since my testimony in the  
25 post conviction -- PCR proceeding, has been

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

82

1 more reflection on my part of back to that  
2 case, also the fact that the PCR was granted.  
3 And I have read, independent of my meeting  
4 with him today, I mean back when it was  
5 granted, I read the opinion that the  
6 magistrate judge issued because I was  
7 interested in it.

8 Q Would you ever be a part of any group or  
9 organization that would witness tamper?

10 MR. DRURY: Object to the form.

11 BY MR. TOLBERT:

12 Q You can answer the question.

13 MR. DRURY: Relevance.

14 A No. Would I engage in witness tampering?

15 BY MR. TOLBERT:

16 Q No. Would you ever be a part of any  
17 organization or group that would witness  
18 tamper.

19 MR. DRURY: Same objections.

20 A Yeah, I don't understand your question.

21 BY MR. TOLBERT:

22 Q My question is, would you affiliate with any  
23 group or organization or entity that would  
24 witness tamper?

25 MR. DRURY: Same objections.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

83

1 BY MR. TOLBERT:

2 Q You can answer the question.

3 A I wouldn't intentionally do any of that.

4 Q That wasn't my question, Attorney King. My  
5 question is, would you affiliate or align  
6 yourself with any group or entity that would  
7 witness tamper?

8 MR. DRURY: Object to the form.

9 BY MR. TOLBERT:

10 Q You can answer the question.

11 A That would in the future witness --

12 Q No, that --

13 A -- tamper or that I believe was engaged in --

14 Q Yes.

15 A -- witness tampering?

16 Q Yes.

17 A No, I wouldn't.

18 Q Okay. And you became the mayor of the City of  
19 Gary, didn't you, after this case?

20 A I did.

21 MR. DRURY: Object to the form and  
22 relevance.

23 BY MR. TOLBERT:

24 Q Okay. And that would have been after the  
25 wit -- after the City of Gary would have

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

84

1 witness tampered; right?

2 MR. DRURY: Object to the form,  
3 foundation.

4 BY MR. TOLBERT:

5 Q Correct?

6 A It would have been after the --

7 MR. DRURY: Calls for a legal  
8 conclusion.

9 A It would have been after, based on the  
10 information I had, one or more members of the  
11 police department witness tampered, yes.

12 BY MR. TOLBERT:

13 Q And what did you do once you became the mayor?  
14 Did you try to -- did you, did you report  
15 since now -- now, what is the mayor? Aren't  
16 you the chief executive of the city?

17 A You are.

18 MR. DRURY: Object to the form and  
19 relevance.

20 BY MR. TOLBERT:

21 Q Okay. And now you have the power to talk to  
22 the chief and to disclose that information and  
23 try to get it corrected.

24 MR. DRURY: Object to the form.

25

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

85

1 BY MR. TOLBERT:

2 Q True?

3 A Do I have the power?

4 Q Yeah.

5 A Yes.

6 Q Okay. Did you do it?

7 A On that particular --

8 Q Yeah.

9 A Well, no.

10 Q Okay. So, let me get this right. You became  
11 the mayor of the city whose police department  
12 you're saying witness tampered and you did  
13 nothing.

14 MR. DRURY: Object to the form.

15 A Not this police department. That's not fair.

16 MR. DRURY: Hold on. Let me make  
17 my objection. Object to the form, foundation,  
18 relevance.

19 BY MR. TOLBERT:

20 Q You can answer the question.

21 A A member -- one or more members of the police  
22 department.

23 Q Did you call for any internal investigation?

24 A Of that incident?

25 Q Yeah.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

86

1 A No.

2 Q Okay. So you knew about this incident once  
3 you became the CEO of the city and you did  
4 nothing.

5 MR. DRURY: Object to the form.

6 A You're asking now if I did anything?

7 BY MR. TOLBERT:

8 Q Yeah.

9 A I replaced the police chief, brand-new police  
10 chief.

11 Q When did you do that, sir?

12 A Upon taking office --

13 Q And did you --

14 A -- January 1st of 1996.

15 Q And did you replace him for this incident?

16 A No.

17 Q Okay. So again --

18 A There were others.

19 Q Okay. Again, what did you do as it relates to  
20 this incident --

21 MR. DRURY: Object to the form.

22 BY MR. TOLBERT:

23 Q -- that you -- where you're saying there was  
24 witness tampering?

25 MR. DRURY: Object to the form and



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

87

1 relevance.

2 A To form part of my knowledge of what the  
3 police department was engage -- what members,  
4 different members of the police department  
5 were periodically engaging in and helped  
6 direct remedial steps that I took when I took  
7 office.

8 BY MR. TOLBERT:

9 Q So you said some police.

10 A Some, yeah.

11 Q Okay. So it wasn't a widespread practice  
12 then.

13 MR. DRURY: Object to the form and  
14 foundation.

15 A Was what a widespread practice?

16 BY MR. TOLBERT:

17 Q This, the -- what you're describing as witness  
18 tampering.

19 A Well --

20 MR. DRURY: Object to the form and  
21 foundation.

22 BY MR. TOLBERT:

23 Q You can answer the question.

24 A The facts are this officer --

25

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

88

1 BY MR. TOLBERT:

2 Q Isolated.

3 A -- this officer telling me that she was being  
4 pressured by others in her department is an  
5 isolated incident.

6 Q So --

7 A It is isolated.

8 Q So once you became the mayor in 1996; correct?

9 A Yes.

10 Q You didn't find a widespread practice of  
11 coercing or tampering of witnesses, did you?

12 A No.

13 MR. DRURY: Object to the form and  
14 foundation, assumes facts not in evidence.

15 A No.

16 BY MR. TOLBERT:

17 Q All right. And had you taken over the City of  
18 Gary and realized that was there a custom,  
19 policy, or procedure, or practice of witness  
20 tampering or engaging in inappropriate conduct  
21 with witnesses, you would have done something  
22 about it, wouldn't you?

23 MR. DRURY: Objection, calls for  
24 speculation.

25 A Yes.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

89

1 MR. TOLBERT: Okay. I think this  
2 is a good time to take a break. I don't want  
3 to wear Attorney King out.

4 THE WITNESS: Yeah, Attorney King  
5 will be here until 4:00 and then Attorney King  
6 will be going.

7 MR. TOLBERT: Okay.

8 VIDEOGRAPHER: We are going off  
9 the record at 2:56 p.m.

10 MR. TOLBERT: All right. Why  
11 don't we take a few minutes.

12 (Brief recess.)

13 VIDEOGRAPHER: We are now going  
14 back on the record at 3:04 p.m.

15 BY MR. TOLBERT:

16 Q Okay. We're back on the record. Attorney  
17 King, it's my understanding you have some time  
18 constraints?

19 A Yes, I do.

20 Q So we're going to stop this deposition at 4:00  
21 and then we'll just have to show it continuing  
22 and we'll have to bring you back. All right.  
23 It's my understanding you can't come back  
24 until September; right?

25 A It would be challenging.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

90

1 Q Okay. We'll figure out a way to work around  
2 that schedule. Okay?

3 A Okay.

4 Q I'm going to show you what has been marked as  
5 Defendant's Exhibit 8.

6 (Defendant's Exhibit No. 8 marked  
7 for identification.)

8 BY MR. TOLBERT:

9 Q All right. What I've handed you, Attorney  
10 King, marked as Defendant's Exhibit 8 is parts  
11 of the trial transcript involving Willie T.  
12 Donald versus the State of Indiana, and I'm  
13 going to go through parts of this transcript  
14 and ask you some questions about what you  
15 recall, if any, about the witnesses and  
16 evidence that you would have put on at trial.

17 So if you turn towards the back of  
18 Exhibit 8, there's a section that goes through  
19 the witnesses that you would have called at  
20 trial? It's like the third to the last page.  
21 At the top of the page where it has  
22 defendant -- Defense Witnesses?

23 A Uh-huh.

24 Q Do you see that, sir?

25 A Yes, I do.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

91

1 Q Okay. And it indicates that these were the  
2 witnesses that were called at trial, the trial  
3 in which you represented Mr. Donald. It shows  
4 that you called Barbara Price, Sheila Donald,  
5 Dan Hopkins, Richard Sisson, and Ronald Moos.  
6 Do you see that?

7 A Yes.

8 Q Okay. Do you recall actually calling those  
9 witnesses in the trial involving Mr. Donald?

10 A No. I mean, the name Sheila Donald. Dan  
11 Hopkins, I think, is the brother-in-law. But,  
12 no, I don't have a recollection of -- even  
13 though I recognize their names, I'm not -- I  
14 don't have a recollection of them testifying.

15 Q Now, we went through two subpoenas. There was  
16 one that you would have sent for a Sonya -- I  
17 think it was Mary Banks and Sonya Thomas. I  
18 don't see them on the list. And we already  
19 established that you did not call Mary Banks;  
20 correct?

21 A Correct.

22 Q Do you recall what happened with Sonya Thomas,  
23 why you did not call her?

24 A I do not.

25 Q Okay. But we can agree that she was not

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

92

1 called, as referenced in Exhibit 8.

2 A As referenced in Exhibit 8, yes.

3 Q Okay. Okay. I'm going to show you what has  
4 been marked as Defendant's Exhibit 9.

5 (Defendant's Exhibit No. 9 marked  
6 for identification.)

7 BY MR. TOLBERT:

8 Q All right. Defendant's Exhibit 9 is a part of  
9 the trial transcript involving Willie T.  
10 Donald versus the State of Indiana, in which  
11 you would have given your closing -- or not  
12 closing, but your opening statement.

13 Can you peruse through it? It starts at  
14 page 555 and ends at 71.

15 MR. DRURY: I'll just object to  
16 the exhibit. There's nothing to indicate,  
17 other than Mr. Tolbert's narrative, what this  
18 exhibit is.

19 MR. TOLBERT: All right.

20 MR. DRURY: So it's foundation.

21 BY MR. TOLBERT:

22 Q Let me know when you're done kind of looking  
23 at it, Attorney King.

24 A Uh-huh. (Witness reviewing document.) Okay.

25 Q Okay. Do you see on the first page of



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

93

1 Exhibit 9, about three-quarters of the way  
2 down, where it says, By The Court? It's line  
3 21 through 23, where it says, By The Court:  
4 The defense has the option of making an  
5 opening statement. Do you see that?

6 A Yes.

7 Q Do you recall not giving an opening statement  
8 in the case involving Mr. Donald?

9 A Do I recall not giving it?

10 Q Yes.

11 A No.

12 Q Okay. So you would have given one; correct?

13 A Yeah, this says I did.

14 Q Okay.

15 A I don't recall one way or the other if I did  
16 or didn't.

17 Q Okay. Normally would your habit be not to  
18 give an opening statement?

19 A No, not normally.

20 Q Okay. And if you look at Exhibit 9, one of  
21 the things -- I'm going to talk to you about  
22 some of the comments that you made in your  
23 opening statement.

24 If you look at page 56, and you see  
25 page 56, Lines -- this would be Lines 3

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

94

1 through 8. After you say, you know, counsel,  
2 ladies and gentlemen of the jury, good  
3 morning, you say: A few -- a few asides  
4 before we discuss your jobs in any case that  
5 you sit as jurors on. This case it is going  
6 to be particularly tough.

7 What, what did you mean by that? Why  
8 did you say that?

9 A Because --

10 MR. DRURY: Object to the  
11 relevance.

12 A Yeah. Again, I don't have an independent  
13 recall, but if you go down a sentence, I say:  
14 In this case it's going to be particularly  
15 tough. People already -- you already saw  
16 emotion from the victim's family even during  
17 opening remarks.

18 BY MR. TOLBERT:

19 Q Yeah, that's what I was asking.

20 A So that must have -- I mean, I -- and I have  
21 to say that is an incredibly unusual  
22 experience for me. I mean --

23 Q What do you mean?

24 A During opening statements for there to have  
25 been a victim's family outburst that would

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

95

1           have caused me to comment on this, that's  
2           incredibly unusual.

3    Q       Do you recall --

4    A       In fact, I don't have any recall of that ever  
5           having happened before or since.

6    Q       Okay. Do you recall in particular what the  
7           wit -- what the victim outburst would have  
8           been?

9    A       No, just -- it was obviously enough -- in my  
10           view, it was enough for me to make at least an  
11           effort to try and defuse with the jury.

12   Q       Okay.

13   A       So it had to be significant.

14   Q       Okay. Now, starting at Line 16 you state  
15           that: I told you yesterday there is no  
16           question but that Mr. Jiminez was brutally  
17           murdered as part of a terrifying one-man crime  
18           spree the night of February 27th, 1992.

19               Do you recall making that statement in  
20           front of the jury when --

21   A       No, I don't recall it.

22   Q       Okay. Do you recall that being part of the  
23           argument that you were making to the jury when  
24           this case was defended on behalf of  
25           Mr. Donald? Was that --

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

96

1 A No.

2 Q Okay. Do you remember the crime spree that  
3 you might have been referring to?

4 A Do I remember? No. It would have been based  
5 on the anticipated evidence from the state  
6 and, you know, in the context of whatever the  
7 state's opening had been.

8 Q Okay. Do you have any reason to dispute that  
9 that statement that you made -- you, in fact,  
10 made this statement in opening, in your  
11 opening statement.

12 A No, if I assume this to be an accurate  
13 transcript --

14 Q Okay.

15 A -- of the opening statement, no.

16 Q Okay. And it looks like you go on to outline  
17 what the evidence will show, and looks like it  
18 starts on page 58, Line 4.

19 Do you typically kind of outline for the  
20 jury in opening statement what you plan on  
21 showing them?

22 A Yes, that's the purpose of an opening  
23 statement.

24 Q Okay. Did you ever refer to Mr. Donald in  
25 your opening statement as Timmy Donald?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

97

1 A I don't.

2 Q Did you ever refer to him or heard people  
3 refer to him as Timmy Donald?

4 A Yeah.

5 Q Okay.

6 A That was his nickname from his family.

7 Q Okay. And I notice that you didn't refer to  
8 him as Timmy Donald in your opening. Is there  
9 a reason why you didn't do that?

10 MR. DRURY: Object to the form and  
11 foundation.

12 A I don't --

13 BY MR. TOLBERT:

14 Q Excuse me, I didn't hear that last part.

15 A I don't know.

16 Q Okay. All right. And part of the evidence  
17 that you outlined on page 58, if you start at  
18 Line 7, and tell me if there's a statement  
19 that is -- that I say that you said in opening  
20 that you don't -- that you believe wasn't  
21 accurate or wasn't said.

22 It says on Line 7: And you will hear in  
23 this case that at 5:30 p.m. Willie Donald left  
24 his job, the job he had held since 1998 --  
25 1988 as a stock clerk at Goldblatt's where he

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

98

1 was employed then and has been employed  
2 full-time since 1988.

3 Do you recall making that statement?

4 A I don't.

5 MR. DRURY: I object to the  
6 improper use. It's unclear if you're  
7 impeaching or refreshing, but either way the  
8 use of the exhibit is improper. I'll make a  
9 standing objection to that.

10 BY MR. TOLBERT:

11 Q Do you recall making a statement in opening  
12 statement that Willie Donald left his job on  
13 February 27th, 1992 at about 5:30 p.m. where  
14 he was a stock clerk at Goldblatt's?

15 A No.

16 Q Okay. And you have the transcript in front of  
17 you that appears to memorialize what your  
18 opening statement would have been; correct?

19 A I have what you've represented and what  
20 appears to be a transcript of my opening  
21 statement.

22 Q Okay. And you have no reason to dispute the  
23 transcript as you have it before you.

24 A I do not.

25 MR. DRURY: Same objection to



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

99

1 foundation.

2 BY MR. TOLBERT:

3 Q Excuse me, I didn't hear that last -- I didn't  
4 hear what you said.

5 A I was trying to obey the dictates of the court  
6 reporter and let his objection come in,  
7 however imperfectly I did that. What's your  
8 question?

9 Q Well, my question is, do you have any reason  
10 to dispute the accuracy of the transcript that  
11 is --

12 A No.

13 Q -- before you? Okay.

14 And it looks like you've indicated that:  
15 Normally the evidence will be that he will  
16 work until 4:30 at the Goldblatt's located in  
17 the Village Shopping Center in Gary.

18 Is that what you -- your transcript  
19 reflects that you said on this day?

20 MR. DRURY: Objection.

21 A That's what the transcript reflects? Yes,  
22 that's what the transcript reflects.

23 BY MR. TOLBERT:

24 Q Right. You don't remember --

25 A No, I don't.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

100

1 Q -- right? So, I got to, I got to go through  
2 this. Okay?

3 A You don't have to, no.

4 Q Okay. Well --

5 A You can just accept it as a transcript, get a  
6 certified copy.

7 Q Okay. And it indicates that: This day he  
8 worked an hour later and he got in his 1981  
9 Chevrolet and he drove home.

10 Isn't that what you stated in your  
11 opening statement?

12 MR. DRURY: Same objections.

13 A That's what's reported in Defendant's  
14 Exhibit 9.

15 BY MR. TOLBERT:

16 Q And you indicated in your opening statement  
17 that -- starting at Line 19 the transcript  
18 reflects that: You're going to hear in this  
19 case that home for Willie was a residence in  
20 Glen Park that he shared with two sisters,  
21 Sharon and Sheila.

22 I know you had indicated that his mother  
23 and his sister hired you. Could it have been  
24 Sharon and Sheila?

25 A No, I said sisters, plural.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

101

1 Q Okay. Sisters, and not mother?

2 A And the mother.

3 Q And the mother.

4 A And the mother.

5 Q Okay, got you. Okay. And if you look at  
6 page 59 of your -- the transcript of your  
7 opening, you mention a Dan Hopkins?

8 A Yes.

9 Q And you indicate -- and I think you talked  
10 about this earlier, that part of the alibi  
11 defense was that a -- it's my understanding  
12 that Dan Hopkins, who worked for a dealership,  
13 would testify that Mr. Donald had actually  
14 stopped in to purchase, with his sister, to  
15 purchase a car on February 27th, 1992?

16 MR. DRURY: Object to the form,  
17 misstates evidence.

18 A Did you say that Mr. Hopkins worked for a  
19 dealership?

20 BY MR. TOLBERT:

21 Q Yes.

22 A No, I don't think that's accurate.

23 Q Okay. Well, you're right. Mr. Hopkins was  
24 the boyfriend of Mr. Donald's sister; is that  
25 right?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

102

1 A He was either boyfriend or fiancé or husband  
2 of one of Mr. Donald's sisters.

3 Q Okay. And you indicated in your opening  
4 statement that Mr. Hopkins is a meticulous guy  
5 and that he is the kind of guy that plans  
6 things out.

7 Do you remember -- do you see that  
8 statement in the transcript?

9 MR. DRURY: Same objection as to  
10 form and relevance.

11 A I see it.

12 BY MR. TOLBERT:

13 Q Okay. And is it your recollection that part  
14 of the alibi defense was that Dan Hopkins,  
15 Mr. Donald's sister, and Mr. Donald on the  
16 night that these crimes involving Belinsky and  
17 Mrs. Williams would have occurred, he would  
18 have been out car shopping?

19 MR. DRURY: Same objections.

20 A Yes. That's why the alibi notice was given.

21 BY MR. TOLBERT:

22 Q Okay. And that was something, based on the  
23 transcript after you reviewed it, that you  
24 indicated to the jury in your opening  
25 statement would be shown in evidence; correct?

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

103

1 A That they were shopping?

2 Q Yes, that Mr. Donald was part of the shopping  
3 at the time the robberies --

4 A Yes.

5 Q -- and the murder would have occurred.

6 A Uh-huh.

7 Q Okay. And I believe that the dealership that  
8 you indicate in your opening statement that he  
9 would have been with his sister and the  
10 sister's fiance would have been Paul Sur  
11 Pontiac, at 6300 Broadway in Merrillville,  
12 Indiana? This is on page 60 of your -- of the  
13 transcript of your opening statement.

14 MR. DRURY: Again, I'll object to  
15 the improper use of the exhibit, relevance,  
16 and form.

17 A Yes, I said they went to the Paul Sur Pontiac,  
18 6300 Broadway.

19 BY MR. TOLBERT:

20 Q Okay. And you indicated that the testimony  
21 would show that a Rick Sisson, who was a  
22 business manager at Paul Sur, would testify  
23 that he remembered two African-American men  
24 and one African-American woman came in looking  
25 for cars. This is at the end of page 60 and

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

104

1 the beginning of page 61 of the transcript of  
2 your opening statement. Do you see that?

3 A Yes.

4 MR. DRURY: And I'll continue the  
5 objection. Just to make sure it's clear what  
6 I'm objecting to, it's unclear to me, Mike, if  
7 you're asking if the transcript just says the  
8 words on the paper or if he remembers what he  
9 said during opening statement, and that's why  
10 I'm continuing because --

11 MR. TOLBERT: No, I understand.

12 MR. HUNTER: -- I think it's if  
13 it's the former, it's improper. If it's the  
14 latter, I'm unclear why he has the exhibit in  
15 front of him. Anyway, I just want to make  
16 sure that the record is clear and you're clear  
17 why I keep objecting.

18 MR. TOLBERT: I understand. No, I  
19 understand. He says he doesn't remember.

20 MR. DRURY: Okay.

21 MR. TOLBERT: And so that's why  
22 I'm going through the transcript with him to  
23 see if the transcript would jog his memory, if  
24 any, in terms of what he remembers saying in  
25 his opening statement. And when he says he



**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

105

1           doesn't remember, then I will just ask him is  
2           that what the transcript reflects he said.

3   BY MR. TOLBERT:

4   Q       So do you see at the bottom of page 60 of  
5           Exhibit 9, which is the transcript of your  
6           opening statement, do you see, starting at  
7           Line 20, on page 60, through 25 and then going  
8           over to page 61, Line 1 through 2, if you read  
9           those lines, tell me or not -- tell me whether  
10          or not that refreshes your recollection in  
11          terms of what you remember saying in opening  
12          statement regarding Rick Sisson and  
13          Mr. Donald's alibi defense.

14   A       No, it doesn't refresh my recollection.

15   Q       All right. And it doesn't refresh your  
16          recollection. I believe we've already  
17          established that you don't dispute that the  
18          transcript as stated is -- you're not saying  
19          it's inaccurate.

20   A       I'm not saying it's inaccurate or accurate.

21   Q       Okay. Do you have any reason to dispute the  
22          transcript that is before you?

23   A       I presently have no reason to dispute it.

24   Q       Okay. And if you look at Line 20 on page 60  
25          of the transcript, Line 20 through 25, you

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

106

1 state: You're going to hear from Rick Sisson,  
2 for example, you're going to hear he's the  
3 business manager at Paul Sur. You're going to  
4 hear him recall, I remember Thursday night, I  
5 remember the two African-American men and one  
6 African-American woman came and they were  
7 looking at cars.

8 And it goes over to page 61, Lines 1  
9 through 2. Is that what the transcript says?

10 MR. DRURY: Same objections.

11 A Yes.

12 BY MR. TOLBERT:

13 Q Okay. And you see at the bottom of the  
14 page 61 of your open -- this transcript of  
15 your opening statement, on Line 21, it says:  
16 And you're going to hear Thursday night at  
17 Paul Sur Pontiac at this period of time were  
18 one of the few nights of the week where they  
19 stayed open late until 9:00.

20 First, do you recall making that  
21 statement --

22 A No.

23 Q -- in opening statement?

24 A No, I don't.

25 Q Okay. And this document doesn't help you --

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

107

1 A No, it doesn't.

2 Q -- refresh your -- okay. And you have no  
3 reason to dispute this part of the transcript  
4 that I just read.

5 MR. DRURY: Asked and answered and  
6 misstates his testimony.

7 A No.

8 BY MR. TOLBERT:

9 Q Excuse me?

10 A No.

11 Q Okay. And if you look at page 62, Line 8,  
12 I'll read it to you, it says, then -- this is  
13 what you state as reflected by the transcript,  
14 Attorney King: Then you're going to hear they  
15 traveled to Bob Anderson Pontiac and you're  
16 going to hear testimony from personnel at Bob  
17 Anderson Pontiac who are going to tell you  
18 they recollect it's getting toward 9:00. Why?  
19 Because it's getting past their closing time,  
20 but you're going to hear these salesmen tell  
21 you that they want ahead -- they went ahead.  
22 These folks were there and they remember they  
23 test drove this van. They remember they test  
24 drove a Sunbird. They remember talking to  
25 them about the Grand Am. I remember writing

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

108

1 down some prices and giving them some prices  
2 explaining different finance options.

3 I'm assuming you don't remember that  
4 statement made in your opening statement  
5 regarding the alibi defense, do you?

6 A I do not.

7 Q Okay. And you would agree with me that's what  
8 the transcript reflects that you said in  
9 opening statement regarding the alibi defense.

10 A Yes.

11 Q Okay. Okay. Then on page 64 of your  
12 transcript, of the opening statement of the  
13 transcript, it -- if you look at Line 18,  
14 Lines 18 through 25, and it carries over on  
15 page 65, it indicates that you stated in your  
16 opening, quote, now, you're going to hear sure  
17 enough Rhonda Williams. You're going to hear  
18 Kimerly Belinsky testify in front of you that  
19 that is the face they saw that night. But  
20 you're going to hear how they came to pick  
21 that face. You're going to hear in detail  
22 every description they have ever given -- and  
23 it carries over to page 65, the perpetrator of  
24 these offenses. You're going to hear in  
25 detail what happened as the police began their

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

109

1 investigation. And what you're going to hear  
2 in this case is that on March 2nd and 3rd,  
3 days after these crimes were committed, both  
4 of these young ladies, looking through books  
5 of photographs, came upon a photograph of  
6 Willie.

7 Does reading that jog your memory in  
8 terms of whether you said that or not?

9 A It does not.

10 Q Okay. And you would agree with me that the --  
11 what I just stated is reflected in the trial  
12 transcript of your opening statement.

13 A Yes.

14 Q Okay. And you'll see on page 65, Line 9,  
15 where it says: And you're going to hear  
16 Ms. Belinsky looked at photographs days after  
17 this happened and said -- and this is what  
18 you -- the transcript reflects that you said  
19 in opening statement: Well, that looks like  
20 the person, but I can't be sure. And then  
21 you're going to hear Ms. Williams looked at  
22 the photograph and said, yes, that's the  
23 person off this photograph.

24 Again, does that -- reading this part of  
25 the open -- transcript of your opening

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

110

1 statement, does that refresh your recollection  
2 as to whether or not you said that in opening  
3 statement?

4 A It does not.

5 Q Okay. And you would agree with me that the  
6 transcript reflects that that statement was  
7 made as it relates to Mrs. Belinsky's  
8 identification as well as Mrs. Williams'  
9 identification of Mr. Donald.

10 MR. DRURY: Object to the form.

11 A Yeah, from Defendant's Exhibit 9 for  
12 identification.

13 BY MR. TOLBERT:

14 Q Okay. Do you recall when you put this -- when  
15 you tried this case for Mr. Donald, do you  
16 recall what information or evidence that you  
17 put before the jury that showed that there  
18 were problems with the lineup procedure put on  
19 by the Gary Police Department?

20 A Did I what now?

21 Q Did you remember putting on any evidence at  
22 trial that would show that there were problems  
23 with the way that the Gary Police Department  
24 did physical lineups of suspects?

25 A I don't have a recall. I imagine, frankly, in



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

111

1 part based on what you just read, that during  
2 cross-examination of either the complaining  
3 witnesses and/or the police pointing out the  
4 procedure that they engaged in, it looks like  
5 in the opening I was talking about how quickly  
6 after their looking at the photographs they  
7 then presented a lineup.

8 Q Do you have any independent recollection of  
9 putting any evidence forward that would show  
10 that the lineup procedures that would have  
11 been conducted by the Gary Police Department  
12 in 1992 were in some way invalid or --

13 A Well, that wouldn't be --

14 MR. DRURY: Object to the form.

15 A -- in front of the jury.

16 BY MR. TOLBERT:

17 Q Excuse me?

18 MR. TOLBERT: Go ahead.

19 MR. DRURY: Object to the form,  
20 foundation, calls for an opinion.

21 A That wouldn't be done in front of a jury.

22 BY MR. TOLBERT:

23 Q Okay. It would be done outside of the jury in  
24 front of a, what, a judge on voir dire? What,  
25 what --

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

112

1     A     If I had, if I had adequate evidence to show  
2           an unduly suggestive show-up, lineup,  
3           photographic or live, it would be a motion to  
4           suppress.

5     Q     Did you file one of those in this case?

6     A     I did not because I didn't have the evidence  
7           at that time.

8     Q     Okay. On page 67, it looks like you indicate  
9           in your opening statement, based on the  
10          transcript we have before us, starting at  
11          Line 14 -- well, starting at Line 8, you state  
12          in opening: And you're going to hear from the  
13          police. They searched that house looking for  
14          clothing that fit the description of what the  
15          guy that did this was wearing. They looked  
16          for a gun, they looked for purses, and other  
17          things taken from folks during this night of  
18          the crime -- of crime. They looked high, they  
19          looked low, and the evidence is going to be in  
20          this case they didn't find one thing. They  
21          didn't -- they did not find one piece of  
22          clothing remotely close to what the person  
23          that did this was wearing. They didn't find  
24          any evidence whatsoever. They didn't find a  
25          gun. They didn't find anything. Nor did they

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

113

1 find any evidence whatsoever of drug use by  
2 folks that live in this house. They didn't --  
3 they didn't find anything.

4 Does that refresh your recollection as  
5 to whether or not you made the argument in  
6 your opening statement that there was no  
7 physical evidence that would link Mr. Donald  
8 to the crimes that he was charged with?

9 MR. DRURY: Object to the form.

10 A Yeah. It doesn't refresh my memory as to what  
11 I said in the opening. And you did read,  
12 somewhere between accurately and inaccurately,  
13 a paraphrase of what's in there.

14 BY MR. TOLBERT:

15 Q I'm sorry, I didn't get that last part. What  
16 did you say?

17 A Whether you read verbatim or not, you just  
18 conveyed, yeah, I think accurately --

19 Q Okay.

20 A -- the sense of what's contained in  
21 Defendant's Exhibit 9.

22 Q Okay.

23 A But it doesn't refresh my memory.

24 Q Okay. And then on page 68, starting at  
25 Line 7, it looks like the transcript reflects

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

114

1           that in your opening statement, starting at  
2           Line 7, you said: Now, you're going to hear  
3           in this case that Rhonda Williams' robbery and  
4           the Jaminez robbery-murder are not the only  
5           crimes that happened in that neighborhood that  
6           night. Not by a long shot. You will hear --  
7           this will be presented to you by the  
8           defense -- other people in this neighborhood  
9           in this same period of time were robbed in a  
10          remarkably similar fashion by a person  
11          absolutely fitting the description given of  
12          that killer of Mr. Jaminez and the robber of  
13          Rhonda Williams. I mean to a T. It's going  
14          to be the evidence in this case.

15                 That -- based off of what your previous  
16          testimony has been, that doesn't refresh your  
17          recollection --

18    A       No.

19    Q       -- about whether you said that statement in  
20          opening statement; correct?

21    A       Correct.

22    Q       But it is an accurate -- it's -- I accurately  
23          stated what the transcript reflects you would  
24          have said in opening statement related to  
25          other robberies that would have taken place in

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

115

1 the neighborhood.

2 A Yeah, you've accurately --

3 MR. DRURY: Object to form.

4 BY MR. TOLBERT:

5 Q What was that?

6 A You've accurately represented what's contained  
7 in Defendant's 9.

8 Q Okay. I'm going to show you what has been  
9 marked as Defendant's Exhibit 10.

10 (Defendant's Exhibit No. 10 marked  
11 for identification.)

12 BY MR. TOLBERT:

13 Q All right. Defendant's Exhibit 10, Attorney  
14 King, appears to be a cross-examination of a  
15 Ron Moos from Bob Anderson Pontiac.

16 Do you see the first page that's  
17 indicated as page 809, and under it says 1340,  
18 which appears to be a Bates stamp of the  
19 transcript?

20 MR. DRURY: Objection to the  
21 mischaracterization of what the exhibit says.

22 A This isn't a -- doesn't appear to be a  
23 cross-examination.

24 BY MR. TOLBERT:

25 Q Oh, I'm sorry, a direct examination of

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

116

1 Mr. Moos by you?

2 A It appears -- I mean, that's what it says.

3 Q Okay. Do you have any recollection of  
4 questioning Mr. Moos --

5 A No.

6 Q -- at the trial when you defended Mr. Donald?

7 A I do not.

8 Q Okay. Now, if I understand it, Mr. Moos was  
9 one of your alibi witnesses that would have --  
10 that would support your alibi defense for  
11 Mr. Donald?

12 MR. DRURY: Object to the form.

13 A From what I read, it appears.

14 BY MR. TOLBERT:

15 Q Okay. And based off of what you're reading in  
16 front of you as Exhibit 10, what, what did you  
17 intend to offer with Mr. Moos at trial?

18 A That the defendant, criminal defendant,  
19 plaintiff here, along with his sister and her  
20 husband, brother-in-law, or fiance, whatever,  
21 in fact were out shopping for cars.

22 Q Okay. And was Mr. Moos as the business  
23 manager of Pontiac intended to be able to show  
24 that Mr. Donald was, in fact, at Bob Pontiac  
25 and not at the location where the crimes would



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

117

1 have occurred.

2 A That was the alibi defense, yes.

3 Q Okay. Did you take a deposition of or  
4 statement of Mr. Moos before trial?

5 A I did.

6 Q Okay. Did you take a deposition or a  
7 statement?

8 A A statement.

9 Q Okay. And based off of your review of the  
10 transcript and maybe your independent  
11 recollection of the statement that you would  
12 have taken of Mr. Moos, do you recall what he  
13 testified to at trial?

14 MR. DRURY: Object to the form.

15 A No.

16 BY MR. TOLBERT:

17 Q Okay. Do you see on page 810 -- this is  
18 you -- this transcript that's marked as  
19 Exhibit 10 is a transcript that shows your  
20 direct examination of Mr. Moos at trial;  
21 correct?

22 A Yes.

23 Q Okay. And if you look at page 810 of  
24 Defendant's Exhibit 10, do you see the line  
25 where it starts Line 11, your question is:

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

118

1 All right. Now, let me ask you if there came  
2 a time when you had an occasion to meet with  
3 two young African-American men and one young  
4 African-American woman interested in  
5 purchasing a car from your dealership?

6 Mr. Moos's answer is: Yes. Your question is:  
7 Do you have any recollection of approximately  
8 when that was? Mr. Moos's answer is:  
9 February.

10 And then your question is: Of what  
11 year? And then his answer is: This year.  
12 And then your question is: 1992? And his  
13 answer is: Yes, sir. Then the next question  
14 by you is: Do you have a recollection of what  
15 day of the week that would have been? And it  
16 goes over to page 11: And if you don't,  
17 that's fine. And the answer is: No, I don't  
18 remember exactly.

19 Do you remember that exchange, having  
20 that exchange with Mr. Moos at trial in front  
21 of the jury?

22 MR. DRURY: Objection to the  
23 improper use of the exhibit for the reasons  
24 stated previously.

25 A I'm sorry, repeat just the last part, please.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

119

1 MR. TOLBERT: Could you read it  
2 back for me, please.

3 (Question read back by reporter.)

4 A No, I don't.

5 BY MR. TOLBERT:

6 Q Isn't it true that Mr. Moos, based on your  
7 review of the transcript, could not remember  
8 the day whether or not Mr. Donald came in to  
9 the dealership exactly on February 27th, 1992?

10 MR. DRURY: Object to the form.  
11 The witness says he can't recall.

12 BY MR. TOLBERT:

13 Q You can --

14 A That's what it says in the transcript. I  
15 don't have any independent recollection.

16 Q But you have no reason to doubt the  
17 transcript; correct?

18 MR. DRURY: Object to the form.

19 A No, but --

20 BY MR. TOLBERT:

21 Q Okay. Do you -- you don't have any  
22 independent recollection of any statement --  
23 scratch that.

24 It looks like it indicates that, on  
25 page 811, Mr. Moos testified that the

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

120

1 dealership closed at 8:30 p.m.

2 Do you have any recollection that that  
3 was the testimony by Mr. Moos at trial when  
4 you were defending Willie Donald in 1992?

5 A No.

6 MR. DRURY: Object to the form.

7 BY MR. TOLBERT:

8 Q And isn't it true that Mr. Moos testified that  
9 he didn't pay much attention to the men who  
10 would have been in the dealership on  
11 February 27th, 1992?

12 MR. DRURY: Object to the form.

13 A Isn't it true --

14 BY MR. TOLBERT:

15 Q He didn't --

16 A -- that he said that?

17 Q Yes.

18 A I don't know.

19 Q Okay. If you turn to page 816 and Line 10,  
20 your question was: All right. So was your  
21 focus on this one fellow as opposed to the  
22 other fellow? The answer was: I didn't pay  
23 much attention to the other fellow.

24 Do you recall that exchange taking place  
25 in open court when you were doing a direct

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

121

1 examination of Mr. Moos?

2 A No.

3 MR. DRURY: Again, I'll object to  
4 the improper use of the exhibit.

5 BY MR. TOLBERT:

6 Q Do you have any recollection whether or not  
7 Mr. Moos actually was able to establish that  
8 Mr. Donald was, in fact, at the dealership on  
9 February 27th, 1992, based on what you were  
10 able to get out of him at trial?

11 A I have no recollection.

12 Q In fact, Mr. Moos was shown a picture of -- he  
13 was shown a picture to see whether or not he  
14 could identify Mr. Donald as the person at the  
15 dealership, and isn't it true that he couldn't  
16 pick Mr. Donald as the person that was at the  
17 dealership on the day that these crimes  
18 occurred?

19 MR. DRURY: Object to the form.

20 A I don't recall.

21 BY MR. TOLBERT:

22 Q Okay. If you look at page 823. All right.  
23 If you look at Line 12, your question was:  
24 And the picture we're talking about is that  
25 Arister Thompkins, at least according to what

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

122

1 is written on the back, is that right? His  
2 answer is: Right.

3 Do you recall showing -- do you recall  
4 Mr. Moos identifying a person by the name of  
5 Arister Thompkins as the person that was at  
6 the dealership and not Mr. Donald on the day  
7 that the crimes would have occurred?

8 MR. DRURY: Object to the form.

9 A No, and if you read ahead, that's not even  
10 what the transcript says.

11 BY MR. TOLBERT:

12 Q Okay. Well, I just read it verbatim.

13 A I understand. But if you go back, he's not  
14 talking about Mr. Donald. He's talking about  
15 Mr. Hopkins.

16 Q Right, that's my point. Do you have any --

17 A I don't have any independent --

18 Q Right.

19 A -- recollection, no.

20 Q Right. And my point is, do you have any  
21 independent recollection based on your review  
22 of the transcript or what you recall, that  
23 Mr. Moos was, in fact, able to say that  
24 Mr. Donald was the person that was at the  
25 dealership on the day that the crimes



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

123

1 involving Belinsky and Williams would have  
2 taken place?

3 A No, I have no --

4 MR. DRURY: Object to the form and  
5 foundation.

6 A I have no recollection.

7 BY MR. TOLBERT:

8 Q Okay. Even after reading the transcript.

9 A Right.

10 Q Okay.

11 MR. DRURY: I'll object. The  
12 witness hasn't read the transcript.

13 MR. TOLBERT: Okay. Well, he's  
14 looking at it right knew.

15 BY MR. TOLBERT:

16 Q And the answer is no?

17 A That my memory is refreshed, no, it's not.

18 Q Okay. No, my question to you was, you don't  
19 have -- you don't -- you're not -- as you sit  
20 here today, you can't say that Mr. Moos  
21 identified Mr. Donald as the person being in  
22 the dealership on the day the crimes would  
23 have taken place with Mrs. Belinsky and  
24 Mrs. Williams.

25 A I don't have any recall of Mr. Moos's

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

124

1 testimony.

2 MR. TOLBERT: Okay. Could you  
3 read that question back for me, please.

4 (Question read back by reporter.)

5 BY MR. TOLBERT:

6 Q Right, that's my question.

7 MR. DRURY: Objection, asked and  
8 answered.

9 BY MR. TOLBERT:

10 Q You can answer the question.

11 A I don't have any recall and my memory is not  
12 refreshed.

13 Q Okay. So you don't have any recall that  
14 Mr. Moos testified that Mr. Donald was at the  
15 dealership on February 27th, 1992, when the  
16 crimes involving Ms. Belinsky and  
17 Mrs. Williams would have taken place.

18 A No.

19 MR. DRURY: Object to the form and  
20 asked and answered.

21 BY MR. TOLBERT:

22 Q That's no?

23 A (No immediate response.)

24 Q Okay. Was that a no, Attorney King?

25 A It was no.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

125

1 Q Okay. And if you look at page 28 -- 828.

2 Well, first, if you look at page 823, it looks  
3 like Attorney Phil Benson actually had the  
4 opportunity to cross, to do a  
5 cross-examination of Mr. Moos; is that  
6 correct?

7 A If I look at page 823 --

8 Q Uh-huh.

9 A -- it looks like Mr. Benson had an opportunity  
10 for cross-examination.

11 Q Okay. And if you look at page 828 -- before I  
12 go to the transcript, as you sit here today,  
13 do you recall Mr. Moos testifying in open  
14 court during your trial in which you were  
15 defending Mr. Donald that he could not  
16 recognize Mr. Donald as the third person in  
17 the dealership on February 27th, 1992?

18 A What's the question?

19 Q Do you recall that Mr. Moos testified that he  
20 could not recognize Mr. Donald as the third  
21 person who was in the dealership on  
22 February 27th, 1992?

23 A No, I --

24 MR. DRURY: Object to the form.

25 A I don't recall.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

126

1 BY MR. TOLBERT:

2 Q Okay. And if you look at page 828, Lines 9  
3 through 12, I'll read the question for  
4 Mr. Benson and the answer for Mr. Moos. It  
5 says, question: And it's your testimony today  
6 that you cannot recognize the defendant as the  
7 third person who was in the dealership. His  
8 answer was: No, sir, not really.

9 Do you have any reason to dispute or  
10 question that Mr. Moos, in fact, testified in  
11 that fashion during the trial in which you  
12 defended Mr. Donald --

13 A No.

14 Q -- in 1992?

15 MR. DRURY: Again, I'll object  
16 that it's improper impeachment or refreshing a  
17 recollection, whichever one you're trying to  
18 do.

19 BY MR. TOLBERT:

20 Q Okay. So you have no reason to -- as you sit  
21 here today, you don't have any recall or  
22 knowledge that Mr. Moos, in fact, said that  
23 Mr. Donald was the third person in the  
24 dealership on February 27th, 1992, supporting  
25 your alibi defense.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

127

1 MR. DRURY: Asked and answered.

2 A No.

3 BY MR. TOLBERT:

4 Q Okay. All right. I'm going to show you what  
5 has been marked as Deposition Exhibit 11.

6 (Defendant's Exhibit No. 11 marked  
7 for identification.)

8 BY MR. TOLBERT:

9 Q All right, sir. What I handed you was a part  
10 of the trial transcript where you did a direct  
11 examination of a Richard Sisson, who is a  
12 manager at Paul Sur Pontiac in Merrillville.

13 Do you see the first page of Exhibit 11  
14 and tell me whether or not that appropriately  
15 identifies what I just handed you?

16 A On Exhibit 11 it says, Richard Sisson, Direct  
17 Examination By Mr. King.

18 Q Okay. Now, Mr. Sisson was one of the people  
19 you listed as a witness on your witness list,  
20 correct, as a person that would support your  
21 alibi defense?

22 A According to a previous exhibit, he was  
23 contained in a notice of additional witnesses  
24 pleading that I recognize my signature on.

25 Q Do you recall as you sit here today whether or

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

128

1 not Mr. Sisson did, in fact, support your  
2 alibi defense?

3 MR. DRURY: Object to the form.

4 BY MR. TOLBERT:

5 Q Do you understand my question?

6 A As I sit here today, I've just read a portion  
7 of the exhibit you just gave me, Exhibit 11,  
8 and appears that he did.

9 Q Okay. And where in the exhibit do you believe  
10 that he supported your alibi defense?

11 A It was --

12 MR. DRURY: Object to the form,  
13 misstates his testimony.

14 BY MR. TOLBERT:

15 Q How about I ask it this way: On page 78 --  
16 788, this is during your questioning of him.  
17 When you're asking him about the date in which  
18 Mr. Donald would have visited the dealership,  
19 the question was this, it states: What is  
20 your best recall -- page 787 and it carries  
21 over to 788 of Exhibit 11.

22 The question is: What is your best  
23 recall of when this happened? And on page 788  
24 your answer is -- the answer is, from  
25 Mr. Sisson, is: I would recall it being a



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

129

1 February-March time. Your question was: All  
2 right. And then answer is: Still wintertime.  
3 And the question is: 1992?

4 Do you remember Mr. Sisson giving a  
5 specific date upon which Mr. Donald would have  
6 been in the dealership in February?

7 A No, but --

8 Q Okay.

9 A -- that isn't the supportive evidence that  
10 I've noted in the transcript.

11 Q Okay. Then if you look at page 801, this is  
12 on cross-examination of Mr. Benson. The  
13 question is, for Mr. Benson, is: And when I  
14 asked you the question in that deposition  
15 about whether you recognize any of these  
16 people being out there, you did not pick the  
17 defendant's picture, correct? And the answer  
18 is: Correct. And then the question from  
19 Mr. Benson is: You picked an individual,  
20 number three, in Defense Exhibit Number 8,  
21 correct? And the answer is, his answer is:  
22 Yes. And then Mr. Benson states: For the  
23 record, that is the name of Arister Thompkins.

24 Do you recall -- do you have any  
25 independent knowledge that Mr. Sisson, in

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

130

1 support of your alibi defense during the jury  
2 trial of Mr. Donald, expressly and explicitly  
3 stated that Mr. Donald was, in fact, at the  
4 dealership at the time the crimes involving  
5 Ms. Belinsky and Mrs. Williams were -- took  
6 place?

7 A No.

8 MR. DRURY: Object to the form.

9 A No.

10 BY MR. TOLBERT:

11 Q You said no?

12 A I did.

13 Q Okay. And this was -- like Mr. Moos, these  
14 two, Mr. Moos and Mr. Sisson, were two people  
15 in your opening statement that you advised the  
16 jury would support your alibi defense; is that  
17 correct?

18 MR. DRURY: Objection. The  
19 witness already testified he doesn't remember  
20 his opening statement.

21 BY MR. TOLBERT:

22 Q You can answer the question.

23 A Based upon the representation of that previous  
24 exhibit being a transcript of the opening  
25 statement, both those names were mentioned.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

131

1 Q And then you see on page 803, this is of  
2 Mr. Sisson and this is further  
3 cross-examination by Mr. Benson, and it says,  
4 question, Line 4: And it's your testimony  
5 that you do not recognize the defendant as  
6 ever being out at your dealership, correct?  
7 And his answer was: I can't say that I recall  
8 him being there. Do you see that?

9 A Yes.

10 Q Okay. And you would agree with me that that  
11 was testimony that was solicited from one of  
12 your alibi witnesses on cross-examination  
13 establishing that they could not testify that  
14 Mr. Donald was, in fact, at the dealership on  
15 the day the crimes involving Belinsky and  
16 Mrs. Williams would have occurred.

17 MR. DRURY: Object to the form and  
18 the improper use of the exhibit.

19 A Yeah, and I'm -- what you've read is  
20 consistent with the Exhibit 11.

21 BY MR. TOLBERT:

22 Q Okay.

23 A On the page you referenced.

24 Q Okay.

25 A Past that, I can't help you.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

132

1 Q And I guess my question again is, consistent  
2 with my other questions is, as you sit here  
3 today, do you recall emphatically showing  
4 through testimony or through evidence that  
5 Mr. Sisson was able to actually place  
6 Mr. Donald in the dealership on the day the  
7 crimes involving Mrs. Williams and  
8 Mrs. Belinsky would have taken place?

9 MR. DRURY: Object to the form and  
10 the use of "emphatically".

11 A From the review of the transcripts, the  
12 context of Mr. Moos, Mr. Sisson, coupled with  
13 Miss -- with Mr. Donald's sister and  
14 Mr. Hopkins, coupled with the admission into  
15 the evidence, which is referenced in one of  
16 these transcripts, of the note that I think  
17 Mr. Sisson positively identified as having  
18 come from him that, yes, it was demonstrated.

19 BY MR. TOLBERT:

20 Q Okay. So is your position that you did, in  
21 fact, demonstrate effectively your alibi  
22 defense?

23 A Collect --

24 MR. DRURY: Object to the form and  
25 relevance.

Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

133

1 BY MR. TOLBERT:

2 Q You can answer the question.

3 A Collectively, through the witnesses and the  
4 exhibits just named, yes.

5 Q Okay.

6 A We presented the evidence that was available,  
7 yes.

8 Q And you would agree with me that Mr. Donald,  
9 despite that, was still convicted.

10 A Mr. Donald was convicted.

11 Q Okay. Do you have any explanation as to  
12 why -- if your alibi defense, as you just  
13 stated, was able to be put before the jury, do  
14 you have any idea how there still was a  
15 conviction arrived at?

16 A Yeah.

17 MR. DRURY: Objection, calls for  
18 speculation.

19 A Yes, I do.

20 BY MR. TOLBERT:

21 Q How's that?

22 A Studies demonstrate that the most believed  
23 evidence in criminal prosecutions by juries is  
24 eyewitness testimony. Those studies also  
25 indicate that the evidence most likely to be

**Videotaped Deposition of: SCOTT L. KING**  
**Case No. 2:17-CV-00032**

134

1           wrong is eyewitness testimony. When you  
2           couple that reality with a lack of either  
3           corroborating or disproving physical evidence,  
4           which now we have the DNA -- back then I think  
5           we were still in the serology days,  
6           fingerprints, that sort of thing -- and you  
7           couple it in Mr. Donald's particular case with  
8           the intentional nondisclosure of exculpatory  
9           evidence, that's a recipe for a conviction, a  
10          wrongful conviction.

11                       MR. TOLBERT: Okay. All right. I  
12          think it's 4:00, so I want to be respectful of  
13          your time.

14                       THE WITNESS: Thank you. I  
15          appreciate that.

16                       MR. HALL: What, what was the last  
17          part of that answer, please?

18                       VIDEOGRAPHER: We are now going  
19          off the video record at 4:01 p.m.

20                       (Brief discussion held off the  
21          record.)

22                       MR. TOLBERT: Let's go back on the  
23          record. I want to show on the record that  
24          this deposition is continuing because he has  
25          an obligation that I didn't necessarily know



Videotaped Deposition of: SCOTT L. KING  
Case No. 2:17-CV-00032

135

1 about. So we'll reschedule this with you,  
2 Attorney King.

3 THE WITNESS: Just through my  
4 office, yes.

5 MR. TOLBERT: Is everybody okay  
6 with that? Scott, you're all right with that?

7 MR. DRURY: Uh-huh.

8 MR. TOLBERT: Okay. Then we're  
9 good. Show it continuing. Thank you very  
10 much, Mr. King.

11 (Proceedings concluded at  
12 4:02 p.m. and continued to a later  
13 date.)

14 \* \* \*

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1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF INDIANA  
 3 HAMMOND DIVISION

4 WILLIE T. DONALD, )  
 )  
 5 Plaintiff, )  
 )  
 6 vs. ) Case No.  
 ) 2:17-CV-00032  
 7 BRUCE OUTLAW, CARLA K. PYLE, )  
 as Special Administrator of )  
 8 the ESTATE OF JOHN E. JELKS, )  
 JR., CITY OF GARY, and other )  
 9 as-yet unknown Employees of )  
 the City of Gary, )  
 10 )  
 Defendants. )  
 11 \_\_\_\_\_ )

12  
 13 REPORTER'S CERTIFICATE

14 I, Beth A. Barnette, CSR, and Notary  
 Public, do hereby certify that I reported in machine  
 15 shorthand the foregoing proceedings had in the  
 above-entitled matter, at the time and place herein  
 16 before set forth; and I do further certify that the  
 foregoing transcript, consisting of one hundred  
 17 thirty-five (135) typewritten pages, is a true and  
 correct transcript of my said stenographic notes.  
 18 Signed this 13th day of December,  
 2019.

19  
 20  
 21  
 22  
 23 

24 BETH A. BARNETTE, CSR  
 Notary Public  
 25 My Commission Expires: 6/13/22

| A                   | 82:22;83:5           | allowed (1)          | around (6)           | automatically (1) |
|---------------------|----------------------|----------------------|----------------------|-------------------|
|                     | African-American (6) | 52:16                | 13:3;16:6;24:12;     | 29:24             |
| able (9)            | 103:23,24;106:5,6;   | allows (1)           | 42:5,14;90:1         | available (2)     |
| 36:14;37:16;67:24;  | 118:3,4              | 70:11                | arrest (1)           | 42:8;133:6        |
| 116:23;121:7,10;    | again (13)           | almost (1)           | 24:22                | aware (2)         |
| 122:23;132:5;133:13 | 15:9;31:19;43:10;    | 29:24                | arrested (1)         | 29:16,21          |
| absence (3)         | 45:19;51:11;86:17,   | along (1)            | 24:18                | away (2)          |
| 55:14,22;56:6       | 19:94;12;103:14;     | 116:19               | arrived (1)          | 46:4;76:20        |
| absolutely (1)      | 109:24;121:3;        | always (2)           | 133:15               |                   |
| 114:11              | 126:15;132:1         | 41:18;81:11          | aside (1)            |                   |
| accept (2)          | against (3)          | amend (1)            | 54:20                |                   |
| 7:10;100:5          | 48:22;49:19;66:10    | 50:9                 | asides (1)           |                   |
| accommodate (1)     | agent (1)            | among (2)            | 94:3                 |                   |
| 7:2                 | 66:8                 | 17:1;30:12           | assessment (1)       |                   |
| accomplished (1)    | ago (2)              | amount (1)           | 36:4                 |                   |
| 39:16               | 5:19;23:7            | 36:23                | assigned (2)         |                   |
| according (2)       | agree (19)           | and/or (3)           | 44:10;54:21          |                   |
| 121:25;127:22       | 31:11,22,25;41:6;    | 55:8;73:7;111:3      | assignment (1)       |                   |
| accordingly (1)     | 46:7;48:9,15;51:5;   | Anderson (3)         | 15:2                 |                   |
| 43:15               | 56:17;64:12;65:15;   | 107:15,17;115:15     | assistance (10)      |                   |
| account (1)         | 70:9;75:15;91:25;    | animal (1)           | 29:9,25;30:4,10;     |                   |
| 45:4                | 108:7;109:10;110:5;  | 38:10                | 31:8;32:2,7,10,16,24 |                   |
| accuracy (1)        | 131:10;133:8         | answered (7)         | Assistant (2)        |                   |
| 99:10               | agreement (1)        | 38:17;51:15;65:10;   | 13:14;14:12          |                   |
| accurate (5)        | 44:13                | 107:5;124:8,20;      | assisted (2)         |                   |
| 96:12;97:21;        | ahead (8)            | 127:1                | 32:2;73:5            |                   |
| 101:22;105:20;      | 13:10;15:1;40:20;    | anticipate (1)       | associate (1)        |                   |
| 114:22              | 47:25;107:21,21;     | 42:16                | 13:5                 |                   |
| accurately (5)      | 111:18;122:9         | anticipated (1)      | associated (1)       |                   |
| 113:12,18;114:22;   | al (2)               | 96:5                 | 10:20                |                   |
| 115:2,6             | 4:3;5:14             | Appeals (1)          | associates (2)       |                   |
| accused (1)         | alibi (34)           | 20:15                | 18:17,18             |                   |
| 21:8                | 47:4,20;48:1,4,5,    | appear (3)           | assume (4)           |                   |
| acquittal (1)       | 24:49;6,25;50:24;    | 31:4,6;115:22        | 18:17;24:21;56:9;    |                   |
| 26:23               | 51:3,18;52:9;53:25;  | appearance (1)       | 96:12                |                   |
| actually (12)       | 59:20;60:4,18;       | 72:5                 | assumes (3)          |                   |
| 6:21;9:5;17:25;     | 101:10;102:14,20;    | appeared (3)         | 59:18;80:24;88:14    |                   |
| 49:8;53:8;75:19;    | 105:13;108:5,9;      | 74:6,22,22           | assuming (4)         |                   |
| 80:10;91:8;101:13;  | 116:9,10;117:2;      | appears (12)         | 16:16;55:13;68:13;   |                   |
| 121:7;125:3;132:5   | 126:25;127:21;       | 31:12;58:20;63:15;   | 108:3                |                   |
| additional (6)      | 128:2,10;130:1,16;   | 70:25;72:8;98:17,20; | attainment (1)       |                   |
| 57:25;58:22;60:6,   | 131:12;132:21;       | 115:14,18;116:2,13;  | 7:17                 |                   |
| 8,19;127:23         | 133:12               | 128:8                | attempt (1)          |                   |
| address (3)         | align (1)            | appellate (1)        | 26:22                |                   |
| 25:18;71:17,18      | 83:5                 | 30:1                 | attendant (1)        |                   |
| adequate (1)        | alike (1)            | appreciate (1)       | 36:3                 |                   |
| 112:1               | 44:20                | 134:15               | attention (2)        |                   |
| adequately (1)      | alle (1)             | appropriate (1)      | 120:9,23             |                   |
| 39:6                | 30:9                 | 50:22                | Attorney (26)        |                   |
| adjustments (1)     | allegation (6)       | appropriately (1)    | 5:10;9:12;10:20;     |                   |
| 43:14               | 30:9;32:7,20;        | 127:14               | 13:14;14:11,12;15:3; |                   |
| admission (2)       | 48:24;50:17;51:1     | approximately (1)    | 22:24;29:22;33:4;    |                   |
| 20:11;132:14        | allegations (4)      | 118:7                | 34:23;46:23;47:12;   |                   |
| advantage (1)       | 29:25;32:23;48:22;   | area (6)             | 53:1;83:4;89:3,4,5,  |                   |
| 45:24               | 49:19                | 10:2,21;11:17;       | 16:90;9;92:23;       |                   |
| advised (1)         | allege (1)           | 15:11,21;18:19       | 107:14;115:13;       |                   |
| 130:15              | 30:3                 | areas (1)            | 124:24;125:3;135:2   |                   |
| advocate (1)        | alleged (3)          | 6:11                 | attorneys (4)        |                   |
| 31:9                | 58:9;62:1;66:10      | argument (3)         | 11:1,7;17:13;29:23   |                   |
| affidavit (1)       | alleges (1)          | 56:5;95:23;113:5     | Attorney's (3)       |                   |
| 25:13               | 29:6                 | Arister (3)          | 14:24;17:21;33:15    |                   |
| affiliate (2)       | allow (2)            | 121:25;122:5;        | A-USA (2)            |                   |
|                     | 20:3;41:8            | 129:23               | 14:9;17:21           |                   |

|   |   |  |   |   |
|---|---|--|---|---|
| 88:8<br><b>began (4)</b><br>8:22,23;25:6;<br>108:25<br><b>begin (1)</b><br>8:18<br><b>beginning (1)</b><br>104:1<br><b>behalf (4)</b><br>4:23;65:3;70:16;<br>95:24<br><b>behind (1)</b><br>30:24<br><b>believes (2)</b><br>51:19;55:5<br><b>Belinsky (9)</b><br>102:16;108:18;<br>109:16;123:1,23;<br>124:16;130:5;<br>131:15;132:8<br><b>Belinsky's (1)</b><br>110:7<br><b>bell (2)</b><br>59:24;73:2<br><b>benefit (4)</b><br>31:2;36:7;43:5;<br>46:5<br><b>benefits (1)</b><br>10:16<br><b>Benson (9)</b><br>78:21;125:3,9;<br>126:4;129:12,13,19,<br>22;131:3<br><b>best (7)</b><br>5:21;7:12;15:14;<br>73:19;81:11;128:20,<br>22<br><b>Beth (1)</b><br>4:13<br><b>better (1)</b><br>31:9<br><b>biggest (1)</b><br>13:23<br><b>bit (1)</b><br>9:25<br><b>black (1)</b><br>67:12<br><b>Bob (4)</b><br>107:15,16;115:15;<br>116:24<br><b>bond (2)</b><br>25:18;36:1<br><b>books (1)</b><br>109:4<br><b>Boss (1)</b><br>4:13<br><b>both (6)</b><br>10:22;30:1;32:9;<br>38:4;109:3;130:25<br><b>bottom (2)</b><br>105:4;106:13<br><b>boyfriend (3)</b><br>49:4;101:24;102:1 | <b>Bozik (1)</b><br>9:5<br><b>Brady (2)</b><br>47:5;54:13<br><b>brand-new (1)</b><br>86:9<br><b>break (2)</b><br>6:23;89:2<br><b>Brief (2)</b><br>89:12;134:20<br><b>bring (1)</b><br>89:22<br><b>Broadway (4)</b><br>4:9;7:13;103:11,18<br><b>brother-in-law (3)</b><br>49:3;91:11;116:20<br><b>brought (2)</b><br>17:25;37:7<br><b>Brown (3)</b><br>16:21;17:3,6<br><b>Bruce (3)</b><br>4:3,19;75:4<br><b>brutally (1)</b><br>95:16<br><b>build (2)</b><br>36:20;54:16<br><b>bulk (1)</b><br>15:6<br><b>burden (1)</b><br>53:4<br><b>Bureau (2)</b><br>69:3,12<br><b>business (3)</b><br>103:22;106:3;<br>116:22<br><br><b>C</b><br><br><b>call (5)</b><br>37:6;59:6;85:23;<br>91:19,23<br><b>called (8)</b><br>5:3;18:4;23:6;<br>72:20;90:19;91:2,4;<br>92:1<br><b>calling (3)</b><br>23:9;73:21;91:8<br><b>calls (17)</b><br>21:3;30:20;32:6,<br>19;36:16;41:14;<br>43:20;46:13;61:19;<br>62:10;65:25;79:4,17;<br>84:7;88:23;111:20;<br>133:17<br><b>came (8)</b><br>21:16;23:4;103:24;<br>106:6;108:20;109:5;<br>118:1;119:8<br><b>can (52)</b><br>5:21;6:21;7:2;<br>13:8;29:14;30:22;<br>31:11,15,22,25;<br>37:14;38:20,22; | 41:15,22;42:1,11;<br>43:22;45:3,3,7,14,19,<br>19,25;46:12;47:25;<br>48:21;49:14;50:12,<br>13;53:12;56:17;<br>59:11;60:17;65:18;<br>68:8;69:25;70:9,13;<br>82:12;83:2,10;85:20;<br>87:23;91:25;92:13;<br>100:5;119:13;<br>124:10;130:22;133:2<br><b>candidly (2)</b><br>38:5;76:17<br><b>car (5)</b><br>49:20;59:19;<br>101:15;102:18;118:5<br><b>care (1)</b><br>64:8<br><b>Carolina (1)</b><br>20:18<br><b>carries (3)</b><br>108:14,23;128:20<br><b>cars (5)</b><br>49:2,9;103:25;<br>106:7;116:21<br><b>case (78)</b><br>4:5;5:15;11:4;<br>13:23;15:6;20:21,25;<br>22:6;24:16;25:6,16,<br>17,20,20;26:1,5;30:8,<br>9;32:3;34:8;35:19;<br>36:5;37:11;39:21,21,<br>23;40:16,23,24;41:8;<br>42:19,24,24;43:10,<br>11,23,24;44:2,10,12,<br>19;45:22;46:2;50:19,<br>21;54:21,21;55:17,<br>25;60:13;61:2,9,13,<br>15,15,21;62:20;67:9,<br>21;73:8;75:21;77:12;<br>82:2;83:19;93:8;<br>94:4,5,14;95:24;<br>97:23;100:19;109:2;<br>110:15;112:5,20;<br>114:3,14;134:7<br><b>cases (11)</b><br>14:23,25;15:4,7;<br>38:7;43:4,4;45:23;<br>61:17,20,20<br><b>cause (2)</b><br>25:13;43:25<br><b>caused (1)</b><br>95:1<br><b>caution (1)</b><br>52:25<br><b>Cedar (1)</b><br>15:24<br><b>Center (2)</b><br>58:11;99:17<br><b>CEO (1)</b><br>86:3<br><b>certain (1)</b><br>80:9 | <b>certainly (3)</b><br>15:14;29:24;46:1<br><b>certifications (4)</b><br>19:16,21,22;20:1<br><b>certified (1)</b><br>100:6<br><b>chair (1)</b><br>34:13<br><b>challenging (1)</b><br>89:25<br><b>Chandra (1)</b><br>59:23<br><b>change (1)</b><br>50:12<br><b>changing (1)</b><br>80:2<br><b>charge (3)</b><br>25:13;32:25;50:10<br><b>charged (10)</b><br>24:18;35:10,14;<br>38:22;48:12;49:7;<br>52:23;53:9;67:23;<br>113:8<br><b>check (1)</b><br>72:8<br><b>Chevrolet (1)</b><br>100:9<br><b>Chicago (1)</b><br>7:24<br><b>chief (4)</b><br>84:16,22;86:9,10<br><b>Circuit (1)</b><br>20:16<br><b>circumspect (1)</b><br>15:14<br><b>circumstances (1)</b><br>63:24<br><b>City (13)</b><br>4:18;5:14;9:14;<br>10:21;65:19;77:6,22;<br>83:18,25;84:16;<br>85:11;86:3;88:17<br><b>civil (5)</b><br>11:22;38:1,10;<br>45:21,23<br><b>claim (2)</b><br>30:16;32:1<br><b>claimed (1)</b><br>29:16<br><b>clear (5)</b><br>49:24;56:12;104:5,<br>16,16<br><b>clerk (3)</b><br>9:4;97:25;98:14<br><b>clerking (1)</b><br>9:3<br><b>client (11)</b><br>11:3;25:15;39:7;<br>41:9;45:9;46:5;50:2;<br>54:16;67:14;70:12;<br>73:15<br><b>client's (1)</b><br>45:10 | <b>close (2)</b><br>71:20;112:22<br><b>closed (1)</b><br>120:1<br><b>closing (4)</b><br>56:5;92:11,12;<br>107:19<br><b>clothing (2)</b><br>112:14,22<br><b>code (1)</b><br>9:12<br><b>coercing (1)</b><br>88:11<br><b>colleagues (1)</b><br>79:18<br><b>Collect (1)</b><br>132:23<br><b>Collectively (1)</b><br>133:3<br><b>colloquial (1)</b><br>31:3<br><b>coming (3)</b><br>22:3;23:8;25:21<br><b>commence (1)</b><br>38:19<br><b>comment (1)</b><br>95:1<br><b>comments (1)</b><br>93:22<br><b>committed (7)</b><br>49:8;50:3;52:8,10,<br>22;68:3;109:3<br><b>commonly (1)</b><br>26:17<br><b>compared (1)</b><br>45:21<br><b>comparison (1)</b><br>67:14<br><b>compel (1)</b><br>47:4<br><b>compensation (1)</b><br>17:1<br><b>complaining (3)</b><br>62:19;67:16;111:2<br><b>complete (2)</b><br>42:15;44:18<br><b>comply (2)</b><br>66:6,7<br><b>component (1)</b><br>16:16<br><b>Conan (4)</b><br>13:6,17,20;14:1<br><b>concept (1)</b><br>57:22<br><b>concessions (1)</b><br>44:12<br><b>conclude (1)</b><br>45:12<br><b>concluded (1)</b><br>135:11<br><b>conclusion (1)</b><br>84:8<br><b>conclusively (2)</b> |
|---|---|--|---|---|

|  |  |  |  |   |
|--|--|--|--|---|
| 52:20,25<br><b>Concordia (3)</b><br>8:1,6,9<br><b>conduct (3)</b><br>37:21;42:15;88:20<br><b>conducted (1)</b><br>111:11<br><b>conducting (1)</b><br>42:22<br><b>conference (1)</b><br>75:1<br><b>conferred (1)</b><br>7:20<br><b>consideration (2)</b><br>35:25;36:11<br><b>consistent (2)</b><br>131:20;132:1<br><b>constraints (1)</b><br>89:18<br><b>contact (1)</b><br>6:8<br><b>contained (3)</b><br>113:20;115:6;<br>127:23<br><b>context (4)</b><br>28:7,8;96:6;132:12<br><b>continue (2)</b><br>37:11;104:4<br><b>continued (1)</b><br>135:12<br><b>continuing (4)</b><br>89:21;104:10;<br>134:24;135:9<br><b>control (1)</b><br>64:8<br><b>conversation (1)</b><br>80:14<br><b>conversations (2)</b><br>23:23;78:10<br><b>conveyed (2)</b><br>75:9;113:18<br><b>convicted (2)</b><br>133:9,10<br><b>conviction (17)</b><br>6:10;22:16;27:12,<br>16;28:1,4,13;29:9,23;<br>54:20;79:22;80:1,20;<br>81:25;133:15;134:9,<br>10<br><b>copy (3)</b><br>47:3;72:8;100:6<br><b>corner (1)</b><br>16:6<br><b>Coroner's (5)</b><br>64:7,14;65:6,11;<br>68:1<br><b>Corporal (1)</b><br>72:20<br><b>corporation (1)</b><br>17:23<br><b>corpus (1)</b><br>25:18<br><b>corrected (1)</b> | 84:23<br><b>Corrections (1)</b><br>31:10<br><b>correctly (1)</b><br>39:3<br><b>corroborating (2)</b><br>56:6;134:3<br><b>counsel (16)</b><br>4:14;10:24;22:10;<br>28:9;29:10;30:1,4,<br>10;32:8,10,16,25;<br>41:23;63:18,23;94:1<br><b>counter (1)</b><br>37:13<br><b>County (5)</b><br>12:4,14,15;15:22;<br>64:6<br><b>couple (5)</b><br>16:1;24:2;51:22;<br>134:2,7<br><b>coupled (2)</b><br>132:12,14<br><b>course (7)</b><br>22:12;32:8;38:9;<br>53:23;54:17;70:1;<br>73:12<br><b>Court (23)</b><br>4:4,13,25;5:7;6:3,<br>18,21;20:15,16;<br>32:15;33:24;34:5;<br>59:4,5,11;64:13;<br>67:25;77:13;93:2,3;<br>99:5;120:25;125:14<br><b>courthouse (1)</b><br>74:7<br><b>courtroom (1)</b><br>77:20<br><b>courts (1)</b><br>12:15<br><b>court's (1)</b><br>68:6<br><b>covered (1)</b><br>49:1<br><b>covering (1)</b><br>66:16<br><b>Crawford (1)</b><br>12:6<br><b>credibility (1)</b><br>36:9<br><b>Crime (15)</b><br>15:2,5;48:8,11;<br>49:16;50:3;51:11,12;<br>52:11;78:20,24;<br>95:17;96:2;112:18,<br>18<br><b>crimes (22)</b><br>19:1;49:7,15;<br>51:10;52:8,22;53:9;<br>67:22;68:3;102:16;<br>109:3;113:8;114:5;<br>116:25;121:17;<br>122:7,25;123:22;<br>124:16;130:4; | 131:15;132:7<br><b>criminal (25)</b><br>10:5,9;11:21;<br>13:21,24;14:25;<br>15:18;16:17;18:23,<br>24;19:22;24:25;37:4;<br>38:1,7,13;39:5;<br>42:10;43:1,10,17;<br>45:20;75:21;116:18;<br>133:23<br><b>cross (1)</b><br>125:4<br><b>cross-examination (9)</b><br>42:22;111:2;<br>115:14,23;125:5,10;<br>129:12;131:3,12<br><b>Crouch (1)</b><br>58:2<br><b>Crown (2)</b><br>16:1;69:4<br><b>currently (1)</b><br>20:16<br><b>custody (4)</b><br>36:2;37:5,17;64:8<br><b>custom (1)</b><br>88:18<br><b>cutoff (1)</b><br>38:6<br><br><b>D</b><br><br><b>Dan (5)</b><br>91:5,10;101:7,12;<br>102:14<br><b>danger (1)</b><br>42:12<br><b>darn (1)</b><br>23:10<br><b>date (8)</b><br>4:6;15:19;37:18;<br>50:12;74:23;128:17;<br>129:5;135:13<br><b>Daugh (2)</b><br>17:10,11<br><b>D-A-U-G-H (1)</b><br>17:10<br><b>daughter (1)</b><br>73:7<br><b>day (10)</b><br>99:19;100:7;<br>118:15;119:8;<br>121:17;122:6,25;<br>123:22;131:15;132:6<br><b>days (7)</b><br>37:7,18;38:12,19;<br>109:3,16;134:5<br><b>DC (1)</b><br>10:15<br><b>dealership (24)</b><br>101:12,19;103:7;<br>118:5;119:9;120:1,<br>10;121:8,15,17;<br>122:6,25;123:22; | 124:15;125:17,21;<br>126:7,24;128:18;<br>129:6;130:4;131:6,<br>14;132:6<br><b>dealerships (1)</b><br>59:19<br><b>dealings (1)</b><br>6:8<br><b>death (4)</b><br>43:25;63:16,25;<br>64:9<br><b>December (1)</b><br>19:10<br><b>decide (1)</b><br>57:3<br><b>decided (1)</b><br>81:16<br><b>defend (1)</b><br>60:14<br><b>defendant (15)</b><br>36:1,8;38:14,23;<br>48:6;51:19,21;55:4,<br>7;64:2;90:22;116:18,<br>18;126:6;131:5<br><b>Defendants (1)</b><br>5:3<br><b>Defendant's (42)</b><br>27:5,9,11;28:12;<br>46:19,20,23,24;55:9;<br>57:25;58:16,17,20,<br>22;60:6;63:6,7,10;<br>68:21,25;69:1;70:20,<br>25;72:11,14,15;90:5,<br>6,10;92:4,5,8;100:13;<br>110:11;113:21;<br>115:7,9,10,13;<br>117:24;127:6;129:17<br><b>Defendants's (1)</b><br>70:24<br><b>defended (5)</b><br>58:6;67:22;95:24;<br>116:6;126:12<br><b>defending (3)</b><br>73:5;120:4;125:15<br><b>defense (41)</b><br>13:21,24;15:18;<br>18:24;21:12;37:13;<br>39:5;43:10,17;45:21,<br>24;48:24;49:6;50:2;<br>51:3;52:6,9;53:1,25;<br>55:11;65:7;73:22;<br>90:22;93:4;101:11;<br>102:14;105:13;<br>108:5,9;114:8;<br>116:10;117:2;<br>126:25;127:21;<br>128:2,10;129:20;<br>130:1,16;132:22;<br>133:12<br><b>defenses (3)</b><br>48:16,17;51:6<br><b>defensive (1)</b><br>48:1 | <b>deficient (1)</b><br>33:16<br><b>defined (1)</b><br>26:15<br><b>definitely (1)</b><br>39:15<br><b>defuse (1)</b><br>95:11<br><b>degree (4)</b><br>7:17,19;8:9,10<br><b>delayed (1)</b><br>37:16<br><b>demand (5)</b><br>37:5,7,18,19;38:18<br><b>demonstrate (2)</b><br>132:21;133:22<br><b>demonstrated (1)</b><br>132:18<br><b>denying (1)</b><br>32:21<br><b>Department (21)</b><br>31:10;65:19;67:2;<br>69:3;73:11;75:3,6;<br>78:2,14,15;80:19;<br>84:11;85:11,15,22;<br>87:3,4;88:4;110:19,<br>23;111:11<br><b>depending (1)</b><br>11:3<br><b>depends (4)</b><br>61:9,13,21;62:12<br><b>deposed (1)</b><br>5:13<br><b>deposition (28)</b><br>4:8;6:1;23:8;40:7,<br>18,20;41:19,21;42:2,<br>6,15;43:9,14,16;44:5,<br>7;45:1;75:16,25;<br>76:2,4,12;89:20;<br>117:3,6;127:5;<br>129:14;134:24<br><b>depositions (10)</b><br>6:16;39:12,19;<br>40:21,25;41:6;42:12;<br>45:14;70:9;75:22<br><b>deputy (1)</b><br>12:10<br><b>described (1)</b><br>46:7<br><b>describing (1)</b><br>87:17<br><b>description (4)</b><br>52:4;108:22;<br>112:14;114:11<br><b>descriptions (1)</b><br>67:15<br><b>desire (1)</b><br>15:17<br><b>despite (1)</b><br>133:9<br><b>detail (2)</b><br>108:21,25<br><b>details (1)</b> |
|--|--|--|--|---|



|   |   |  |   |  |
|---|---|--|---|--|
| 18:6<br><b>detective (1)</b><br>45:7<br><b>dictates (1)</b><br>99:5<br><b>different (6)</b><br>35:19;38:1,10;<br>44:14;87:4;108:2<br><b>difficult (3)</b><br>65:21;66:2,11<br><b>diligently (1)</b><br>36:21<br><b>dire (1)</b><br>111:24<br><b>DIRECT (7)</b><br>5:8;87:6;115:25;<br>117:20;120:25;<br>127:10,16<br><b>directed (1)</b><br>22:14<br><b>directing (2)</b><br>63:11,22<br><b>directly (1)</b><br>31:7<br><b>directs (1)</b><br>64:6<br><b>discharge (2)</b><br>38:23,24<br><b>disclose (1)</b><br>84:22<br><b>discovering (1)</b><br>46:9<br><b>discovery (11)</b><br>25:21;37:21;38:6,<br>7;39:4,10;40:12,15;<br>47:4,6;70:10<br><b>discrepancies (1)</b><br>45:7<br><b>discuss (1)</b><br>94:4<br><b>discussion (2)</b><br>73:12;134:20<br><b>dismissal (2)</b><br>38:25;44:12<br><b>disproving (1)</b><br>134:3<br><b>dispute (8)</b><br>96:8;98:22;99:10;<br>105:17,21,23;107:3;<br>126:9<br><b>District (8)</b><br>4:4,5;11:2;13:15;<br>20:12,13,14,17<br><b>division (6)</b><br>12:12,14,17,18,21;<br>13:1<br><b>DNA (1)</b><br>134:4<br><b>doctor (1)</b><br>7:20<br><b>doctorate (1)</b><br>7:19<br><b>document (12)</b> | 27:23;31:12,23;<br>47:17;58:25;59:3;<br>60:2,4;63:21;66:19;<br>92:24;106:25<br><b>documents (7)</b><br>5:21;22:4;24:3;<br>47:12;60:2;68:18;<br>70:15<br><b>domestic (1)</b><br>11:22<br><b>DON (4)</b><br>27:15,18,19;71:23<br><b>Donald (94)</b><br>4:2,24;5:14,17;6:7,<br>9;20:21;21:6;22:17;<br>25:23;26:18,22;<br>27:13;28:9;29:3,16;<br>31:5,8,13,16;32:14,<br>25;33:15;34:11;35:4,<br>9;39:23;48:17;49:6;<br>51:7;52:7,22;53:7,9;<br>55:11;58:7,8;60:14,<br>23;65:3,7;66:10;<br>67:22;70:16;73:6,22;<br>74:14;79:20;90:12;<br>91:3,4,9,10;92:10;<br>93:8;95:25;96:24,25;<br>97:3,8,23;98:12;<br>101:13;102:15;<br>103:2;110:9,15;<br>113:7;116:6,11,24;<br>119:8;120:4;121:8,<br>14,16;122:6,14,24;<br>123:21;124:14;<br>125:15,16,20;126:12,<br>23;128:18;129:5;<br>130:2,3;131:14;<br>132:6;133:8,10<br><b>Donald's (21)</b><br>22:6;24:11;25:5;<br>26:1,5;28:1,4,24;<br>29:8;31:25;40:14;<br>61:15;68:19;72:1,6;<br>101:24;102:2,15;<br>105:13;132:13;134:7<br><b>done (11)</b><br>10:9;39:17,18;<br>48:11;60:12;61:14;<br>77:1;88:21;92:22;<br>111:21,23<br><b>doubt (1)</b><br>119:16<br><b>down (6)</b><br>6:19;53:24;54:3;<br>93:2;94:13;108:1<br><b>drawback (1)</b><br>46:8<br><b>drive (1)</b><br>44:12<br><b>drove (3)</b><br>100:9;107:23,24<br><b>Drug (4)</b><br>15:3,6,7;113:1 | <b>DRURY (136)</b><br>4:23,23;19:17,23;<br>21:2;22:25;23:20;<br>26:7,11,25;27:4,22;<br>29:1,11,18;30:6,19;<br>31:14;32:5,18;33:9,<br>23;34:4;35:17,24;<br>36:16;37:23;38:16;<br>39:8,25;41:10,14;<br>43:19;45:17;46:10;<br>13;47:2,12,22;48:19;<br>49:11;51:14;52:12;<br>53:10,16;54:5;56:21;<br>57:4;59:17;60:24;<br>61:10,18,24;62:10,<br>23,25;64:17;65:9,24;<br>68:4;69:14,22;79:4,<br>16;80:24;81:3,7,19,<br>22;82:10,13,19,25;<br>83:8,21;84:2,7,18,24;<br>85:14,16;86:5,21,25;<br>87:13,20;88:13,23;<br>92:15,20;94:10;<br>97:10;98:5,25;99:20;<br>100:12;101:16;<br>102:9,19;103:14;<br>104:4,20;106:10;<br>107:5;110:10;<br>111:14,19;113:9;<br>115:3,20;116:12;<br>117:14;118:22;<br>119:10,18;120:6,12;<br>121:3,19;122:8;<br>123:4,11;124:7,19;<br>125:24;126:15;<br>127:1;128:3,12;<br>130:8,18;131:17;<br>132:9,24;133:17;<br>135:7<br><b>duces (1)</b><br>69:1<br><b>duly (1)</b><br>5:4<br><b>during (21)</b><br>10:2;22:11;26:18;<br>32:3,8;38:9;48:18;<br>53:22;54:17;74:11,<br>19;78:4;94:16,24;<br>104:9;111:1;112:17;<br>125:14;126:11;<br>128:16;130:1 | <b>education (2)</b><br>6:6;8:3<br><b>educational (1)</b><br>7:16<br><b>effective (1)</b><br>32:10<br><b>effectively (1)</b><br>132:21<br><b>effort (2)</b><br>44:9;95:11<br><b>eight (1)</b><br>14:7<br><b>either (8)</b><br>22:18;30:1;41:2;<br>45:9;98:7;102:1;<br>111:2;134:2<br><b>elements (1)</b><br>33:5<br><b>Ellicott (2)</b><br>9:14;10:21<br><b>else (6)</b><br>34:8;48:13;50:4;<br>76:17;77:1;79:14<br><b>emotion (1)</b><br>94:16<br><b>emphatically (2)</b><br>132:3,10<br><b>employed (5)</b><br>16:19,21;58:10;<br>98:1,1<br><b>end (3)</b><br>27:13;38:23;<br>103:25<br><b>ended (1)</b><br>80:2<br><b>ends (1)</b><br>92:14<br><b>Enforcement (2)</b><br>15:3,6<br><b>engage (3)</b><br>59:9;82:14;87:3<br><b>engaged (2)</b><br>83:13;111:4<br><b>engaging (4)</b><br>42:4;54:23;87:5;<br>88:20<br><b>enough (5)</b><br>12:25;71:21;95:9,<br>10;108:17<br><b>entails (1)</b><br>21:13<br><b>entirely (1)</b><br>81:23<br><b>entity (2)</b><br>82:23;83:6<br><b>envision (1)</b><br>70:6<br><b>equal (1)</b><br>16:24<br><b>equity (1)</b><br>17:1<br><b>error (1)</b><br>65:2 | <b>errors (2)</b><br>64:23,24<br><b>escapes (1)</b><br>10:21<br><b>especially (1)</b><br>30:7<br><b>essentially (1)</b><br>73:21<br><b>establish (1)</b><br>121:7<br><b>established (3)</b><br>52:20;91:19;<br>105:17<br><b>establishing (1)</b><br>131:13<br><b>Estate (1)</b><br>4:22<br><b>estimating (1)</b><br>9:25<br><b>et (2)</b><br>4:3;5:14<br><b>Ethel (1)</b><br>58:2<br><b>ethically (1)</b><br>45:25<br><b>even (9)</b><br>33:22;38:5;42:11;<br>50:12;70:18;91:12;<br>94:16;122:9;123:8<br><b>everybody (3)</b><br>12:13;59:11;135:5<br><b>evidence (39)</b><br>48:5,7;51:20;<br>52:20;55:6,7,8,24;<br>56:7;59:18;64:1;<br>76:15;80:25;88:14;<br>90:16;96:5,17;97:16;<br>99:15;101:17;<br>102:25;110:16,21;<br>111:9;112:1,6,19,24;<br>113:1,7;114:14;<br>129:9;132:4,15;<br>133:6,23,25;134:3,9<br><b>exactly (2)</b><br>118:18;119:9<br><b>exam (3)</b><br>8:19,21;9:7<br><b>EXAMINATION (6)</b><br>5:8;115:25;117:20;<br>121:1;127:11,17<br><b>examined (1)</b><br>5:4<br><b>example (7)</b><br>37:9;40:7;41:21;<br>42:25;43:23;44:17;<br>106:2<br><b>examples (1)</b><br>42:10<br><b>except (1)</b><br>81:23<br><b>exception (1)</b><br>30:14<br><b>exceptions (3)</b> |
|   |   | <b>E</b>   |   |  |
|   |   | <b>earlier (8)</b><br>5:18;22:9;25:4;<br>27:22;31:15;66:7,18;<br>101:10<br><b>early (5)</b><br>17:24,25;37:6,18;<br>44:18<br><b>earned (1)</b><br>7:19   |   |  |



|   |   |   |   |  |
|---|---|---|---|--|
| 37:9;38:19;43:3<br><b>excerpts (2)</b><br>22:12,13<br><b>exchange (3)</b><br>118:19,20;120:24<br><b>exchanges (1)</b><br>23:22<br><b>exclusively (1)</b><br>56:24<br><b>exculpate (2)</b><br>51:21;55:6<br><b>exculpatory (3)</b><br>55:2;64:1;134:8<br><b>Excuse (7)</b><br>33:12;54:8;61:12;<br>97:14;99:3;107:9;<br>111:17<br><b>execution (1)</b><br>56:10<br><b>executive (1)</b><br>84:16<br><b>Exhibit (72)</b><br>27:5,9,11;28:10;<br>46:19,20,23,24;51:2;<br>55:3;58:16,17,20;<br>60:5,6;63:6,7,10;<br>64:5;65:16;68:21,25;<br>69:1;70:20,24,25;<br>72:7,11,15,15;90:5,6,<br>10,18;92:1,2,4,5,8,16,<br>18;93:1,20;98:8;<br>100:14;103:15;<br>104:14;105:5;<br>110:11;113:21;<br>115:9,10,13,21;<br>116:16;117:19,24;<br>118:23;121:4;127:5,<br>6,13,16,22;128:7,7,9,<br>21;129:20;130:24;<br>131:18,20<br><b>exhibits (1)</b><br>133:4<br><b>exist (1)</b><br>15:17<br><b>existed (1)</b><br>78:17<br><b>existing (1)</b><br>26:17<br><b>exists (2)</b><br>51:20;55:5<br><b>experience (5)</b><br>6:7;15:19;29:21;<br>30:13;94:22<br><b>experienced (1)</b><br>76:16<br><b>expert (1)</b><br>43:23<br><b>explaining (1)</b><br>108:2<br><b>explanation (1)</b><br>133:11<br><b>explicitly (1)</b><br>130:2 | <b>explore (1)</b><br>42:18<br><b>expressly (1)</b><br>130:2<br><b>extremely (1)</b><br>73:13<br><b>eyewitness (3)</b><br>56:7;133:24;134:1<br><br><b>F</b><br><br><b>face (2)</b><br>108:19,21<br><b>facetious (1)</b><br>34:23<br><b>fact (21)</b><br>33:21;52:21;55:18;<br>67:9;68:2;76:21,23;<br>82:2;95:4;96:9;<br>116:21,24;121:8,12;<br>122:23;126:10,22;<br>128:1;130:3;131:14;<br>132:21<br><b>factor (1)</b><br>56:8<br><b>factors (1)</b><br>36:11<br><b>facts (4)</b><br>59:18;80:25;87:24;<br>88:14<br><b>failed (2)</b><br>33:5,18<br><b>fails (1)</b><br>33:16<br><b>fair (3)</b><br>12:25;56:17;85:15<br><b>fairly (3)</b><br>21:7;44:17,18<br><b>fall (2)</b><br>8:24,25<br><b>false (1)</b><br>33:7<br><b>family (4)</b><br>45:10;94:16,25;<br>97:6<br><b>far (3)</b><br>59:10;60:1;63:25<br><b>fashion (3)</b><br>6:2;114:10;126:11<br><b>favorable (1)</b><br>76:6<br><b>February (12)</b><br>95:18;98:13;<br>101:15;118:9;119:9;<br>120:11;121:9;<br>124:15;125:17,22;<br>126:24;129:6<br><b>February-March (1)</b><br>129:1<br><b>Federal (1)</b><br>20:11<br><b>feel (4)</b><br>25:25;26:4,19,21 | <b>fees (1)</b><br>72:5<br><b>fellow (5)</b><br>9:20;67:11;120:21,<br>22,23<br><b>felony (5)</b><br>12:17,20;13:1;<br>14:8;33:6<br><b>female (1)</b><br>62:4<br><b>few (5)</b><br>43:2;89:11;94:3,3;<br>106:18<br><b>fiance (3)</b><br>102:1;103:10;<br>116:20<br><b>figure (1)</b><br>90:1<br><b>file (8)</b><br>25:17;47:8,9,19;<br>49:25;59:4;64:21;<br>112:5<br><b>filed (9)</b><br>28:14;32:14;51:4;<br>60:4,9,18,19;63:12;<br>65:3<br><b>filing (5)</b><br>47:17,20;58:20;<br>60:7;64:11<br><b>finance (1)</b><br>108:2<br><b>find (8)</b><br>88:10;112:20,21,<br>23,24,25;113:1,3<br><b>fine (3)</b><br>50:19,21;118:17<br><b>fingerprint (1)</b><br>55:7<br><b>fingerprinting (1)</b><br>57:10<br><b>fingerprints (5)</b><br>55:14,22,23,24;<br>134:6<br><b>finish (1)</b><br>6:20<br><b>firm (10)</b><br>9:16;13:6;14:20,<br>22;15:8;16:22;17:18;<br>18:1;60:11;72:9<br><b>first (21)</b><br>5:3;8:19,21;9:1;<br>22:10;25:8,12;28:15;<br>33:25;35:8,23,25;<br>45:4,5;47:11;78:7;<br>92:25;106:20;<br>115:16;125:2;127:13<br><b>fit (1)</b><br>112:14<br><b>fitting (2)</b><br>52:4;114:11<br><b>five (1)</b><br>60:8<br><b>flighty (1)</b> | 42:3<br><b>fluid (1)</b><br>38:8<br><b>flush (1)</b><br>45:15<br><b>focus (7)</b><br>10:2;11:17;15:11,<br>17;18:8,20;120:21<br><b>folks (3)</b><br>107:22;112:17;<br>113:2<br><b>follow (2)</b><br>57:5,8<br><b>following (2)</b><br>51:20;55:5<br><b>follows (1)</b><br>5:5<br><b>Force (1)</b><br>15:3<br><b>Forest (1)</b><br>8:1<br><b>forgetting (1)</b><br>15:13<br><b>form (83)</b><br>19:17;21:3;26:7,<br>25;29:11;30:6,19;<br>32:5,18;33:9,19,23;<br>34:4,20;35:17;37:23;<br>39:8,25;41:10;43:19;<br>45:17;46:10;47:22;<br>48:19;49:11;52:12;<br>53:10;54:5;56:21;<br>57:4,5;60:24;61:10,<br>18,24;64:17;65:24;<br>68:5;69:15;79:17;<br>81:19,22;82:10;83:8,<br>21;84:2,18,24;85:14,<br>17;86:5,21,25;87:2,<br>13,20;88:13;97:10;<br>101:16;102:10;<br>103:16;110:10;<br>111:14,19;113:9;<br>115:3;116:12;<br>117:14;119:10,18;<br>120:6,12;121:19;<br>122:8;123:4;124:19;<br>125:24;128:3,12;<br>130:8;131:17;132:9,<br>24<br><b>formal (2)</b><br>39:19;45:6<br><b>formed (2)</b><br>17:22;18:4<br><b>former (1)</b><br>104:13<br><b>formula (1)</b><br>30:11<br><b>forward (2)</b><br>21:11;111:9<br><b>foundation (28)</b><br>29:1,12,19;30:7;<br>31:14;32:6;33:10;<br>34:4,24;40:1,41:11; | 47:2;59:17;62:11;<br>65:25;68:5;69:15,23;<br>84:3;85:17;87:14,21;<br>88:14;92:20;97:11;<br>99:1;111:20;123:5<br><b>foundations (1)</b><br>32:19<br><b>frankly (1)</b><br>110:25<br><b>frequency (1)</b><br>43:24<br><b>frequently (3)</b><br>43:8;44:1,2<br><b>front (15)</b><br>5:22;42:19;60:2;<br>77:3,5,11;95:20;<br>98:16;104:15;<br>108:18;111:15,21,24;<br>116:16;118:20<br><b>fronted (1)</b><br>76:21<br><b>full (1)</b><br>7:5<br><b>full-time (1)</b><br>98:2<br><b>further (1)</b><br>131:2<br><b>future (1)</b><br>83:11<br><br><b>G</b><br><br><b>Gary (21)</b><br>4:10,18;5:15;7:8;<br>16:2,9,10,11,12;<br>65:19;72:23,25;77:6,<br>22;83:19,25;88:18;<br>99:17;110:19,23;<br>111:11<br><b>gather (2)</b><br>36:15;70:11<br><b>gave (3)</b><br>74:13;76:5;128:7<br><b>general (10)</b><br>8:3;10:4,5,10;<br>11:22;33:19;34:19;<br>50:17;55:25;66:25<br><b>gentlemen (1)</b><br>94:2<br><b>given (10)</b><br>45:4;67:15;76:19,<br>23,24;92:11;93:12;<br>102:20;108:22;<br>114:11<br><b>giving (5)</b><br>42:19;93:7,9;<br>108:1;129:4<br><b>Glen (1)</b><br>100:20<br><b>God (2)</b><br>75:11;76:17<br><b>goes (5)</b><br>33:18;75:7;90:18; |
|---|---|---|---|--|

|   |   |   |  |  |
|---|---|---|--|--|
| 106:8;118:16<br><b>Goldblatt's (4)</b><br>58:10;97:25;98:14;<br>99:16<br><b>good (3)</b><br>89:2;94:2;135:9<br><b>Goodman (1)</b><br>59:23<br><b>Gottshall (2)</b><br>17:18;18:3<br><b>government (1)</b><br>15:19<br><b>graduated (2)</b><br>8:16,17<br><b>grainy (1)</b><br>67:12<br><b>Grand (1)</b><br>107:25<br><b>granted (3)</b><br>36:1;82:2,5<br><b>granting (1)</b><br>27:16<br><b>grants (1)</b><br>64:5<br><b>group (5)</b><br>17:12;82:8,17,23;<br>83:6<br><b>grunts (1)</b><br>6:19<br><b>guess (1)</b><br>132:1<br><b>guessing (1)</b><br>59:20<br><b>gun (2)</b><br>112:16,25<br><b>guy (3)</b><br>102:4,5;112:15 | 71:15<br><b>happen (1)</b><br>53:2<br><b>happened (9)</b><br>23:13;54:16;60:11;<br>91:22;95:5;108:25;<br>109:17;114:5;128:23<br><b>Hartman (1)</b><br>9:5<br><b>heads (1)</b><br>6:19<br><b>hear (23)</b><br>97:14,22;99:3,4;<br>100:18;106:1,2,4,16;<br>107:14,16,20;108:16,<br>17,20,21,24;109:1,<br>15,21;112:12;114:2,6<br><b>heard (2)</b><br>34:22;97:2<br><b>hearing (4)</b><br>31:2;79:23;80:1,21<br><b>hearsay (1)</b><br>79:17<br><b>held (2)</b><br>97:24;134:20<br><b>help (7)</b><br>22:4;46:9;60:22;<br>70:12;75:8;106:25;<br>131:25<br><b>helped (2)</b><br>73:21;87:5<br><b>helpful (5)</b><br>41:7,20;42:1;<br>43:16;74:14<br><b>helpfulness (1)</b><br>70:9<br><b>herein (1)</b><br>64:2<br><b>high (3)</b><br>43:24,24;112:18<br><b>highest (3)</b><br>7:16,17,19<br><b>high-risk (1)</b><br>42:4<br><b>himself (1)</b><br>31:23<br><b>hired (8)</b><br>10:14;12:3;13:5,<br>13;21:4,14;25:7;<br>100:23<br><b>hold (2)</b><br>20:3;85:16<br><b>home (2)</b><br>100:9,19<br><b>honored (1)</b><br>38:6<br><b>honoring (1)</b><br>55:1<br><b>hopefully (1)</b><br>5:22<br><b>Hopkins (10)</b><br>91:5,11;101:7,12,<br>18,23;102:4,14; | 122:15;132:14<br><b>hour (1)</b><br>100:8<br><b>house (2)</b><br>112:13;113:2<br><b>How's (1)</b><br>133:21<br><b>HUNTER (1)</b><br>104:12<br><b>husband (2)</b><br>102:1;116:20<br><b>hypothetical (1)</b><br>66:1<br><br><b>I</b><br><br><b>idea (6)</b><br>9:21;10:8,18;<br>11:12;19:8;133:14<br><b>identification (18)</b><br>27:6;46:21;55:17,<br>25;58:18;63:8;68:22;<br>69:3,13;70:21;72:12;<br>90:7;92:6;110:8,9,<br>12;115:11;127:7<br><b>identified (4)</b><br>27:15,18;123:21;<br>132:17<br><b>identifies (1)</b><br>127:15<br><b>identify (3)</b><br>4:15;46:24;121:14<br><b>identifying (2)</b><br>73:13;122:4<br><b>Illinois (4)</b><br>7:24;8:1;20:13,15<br><b>imagine (1)</b><br>110:25<br><b>immediate (1)</b><br>124:23<br><b>immediately (3)</b><br>7:1;8:18;12:11<br><b>impacting (1)</b><br>36:8<br><b>impeached (2)</b><br>76:11,13<br><b>impeaching (1)</b><br>98:7<br><b>impeachment (2)</b><br>81:8;126:16<br><b>imperfectly (1)</b><br>99:7<br><b>improper (9)</b><br>81:7;98:6,8;<br>103:15;104:13;<br>118:23;121:4;<br>126:16;131:18<br><b>inaccurate (2)</b><br>105:19,20<br><b>inaccurately (1)</b><br>113:12<br><b>inactive (1)</b><br>19:10 | <b>inappropriate (1)</b><br>88:20<br><b>incident (5)</b><br>85:24;86:2,15,20;<br>88:5<br><b>include (1)</b><br>10:5<br><b>includes (1)</b><br>29:25<br><b>including (2)</b><br>38:8;76:22<br><b>incomplete (1)</b><br>65:25<br><b>incongruities (1)</b><br>45:8<br><b>inconsistencies (1)</b><br>45:16<br><b>inconsistent (2)</b><br>81:16,21<br><b>incredibly (2)</b><br>94:21;95:2<br><b>independent (14)</b><br>20:19;47:15;58:3;<br>67:7,10;82:3;94:12;<br>111:8;117:10;<br>119:15,22;122:17,21;<br>129:25<br><b>independently (1)</b><br>68:18<br><b>Indiana (18)</b><br>4:5,10;7:8,13;12:4;<br>13:15;15:22;16:11;<br>20:7,9,13;25:17;<br>37:4;50:8;69:5;<br>90:12;92:10;103:12<br><b>indicate (5)</b><br>92:16;101:9;103:8;<br>112:8;133:25<br><b>indicated (9)</b><br>48:7;49:20;99:14;<br>100:16,22;102:3,24;<br>103:20;115:17<br><b>indicates (4)</b><br>91:1;100:7;108:15;<br>119:24<br><b>indicating (1)</b><br>23:7<br><b>indication (2)</b><br>46:4;66:17<br><b>individual (3)</b><br>52:3,21;129:19<br><b>ineffective (13)</b><br>26:4,9,14,19;29:9,<br>17,25;30:4,10;32:1,7,<br>16,24<br><b>ineffectively (1)</b><br>32:2<br><b>inform (1)</b><br>75:2<br><b>information (32)</b><br>25:14;36:15,23;<br>41:7,22,24;45:11;<br>46:9;59:5,62:12; | 63:12,16,23;64:7,13,<br>22;65:5,22;66:8,22;<br>67:25;69:12,19;<br>70:11;71:1;73:4;<br>74:13;76:5,24;84:10,<br>22;110:16<br><b>in-house (1)</b><br>10:24<br><b>Initially (1)</b><br>15:24<br><b>innocent (1)</b><br>21:8<br><b>input (1)</b><br>45:9<br><b>inside (1)</b><br>67:2<br><b>instruction (2)</b><br>33:6,17<br><b>intend (1)</b><br>116:17<br><b>intended (1)</b><br>116:23<br><b>intentional (1)</b><br>134:8<br><b>intentionally (1)</b><br>83:3<br><b>interest (1)</b><br>18:5<br><b>interested (3)</b><br>67:13;82:7;118:4<br><b>internal (1)</b><br>85:23<br><b>interviewed (1)</b><br>73:18<br><b>interviewing (1)</b><br>73:10<br><b>into (8)</b><br>12:17;14:19;21:16;<br>36:11;50:14;56:8;<br>75:1;132:14<br><b>invalid (1)</b><br>111:12<br><b>investigated (1)</b><br>40:16<br><b>investigating (2)</b><br>63:24;70:2<br><b>investigation (4)</b><br>42:3;70:3;85:23;<br>109:1<br><b>investigative (2)</b><br>60:12,21<br><b>involved (1)</b><br>20:21<br><b>involvement (1)</b><br>55:9<br><b>involving (12)</b><br>34:11;60:22;90:11;<br>91:9;92:9;93:8;<br>102:16;123:1;<br>124:16;130:4;<br>131:15;132:7<br><b>Isolated (3)</b><br>88:2,5,7 |
| <b>H</b><br><br><b>habeas (1)</b><br>25:18<br><b>habit (6)</b><br>35:12,13,16;55:19;<br>61:7;93:17<br><b>hac (1)</b><br>20:17<br><b>HALL (3)</b><br>4:19,19;134:16<br><b>hand (1)</b><br>72:14<br><b>handed (6)</b><br>27:10;63:10;65:17;<br>90:9;127:9,15<br><b>handle (1)</b><br>14:23<br><b>handled (1)</b><br>79:19<br><b>handling (3)</b><br>11:19;22:6,6<br><b>hands (1)</b><br>75:12<br><b>handwriting (1)</b>   | <b>heard (2)</b><br>34:22;97:2<br><b>hearing (4)</b><br>31:2;79:23;80:1,21<br><b>hearsay (1)</b><br>79:17<br><b>held (2)</b><br>97:24;134:20<br><b>help (7)</b><br>22:4;46:9;60:22;<br>70:12;75:8;106:25;<br>131:25<br><b>helped (2)</b><br>73:21;87:5<br><b>helpful (5)</b><br>41:7,20;42:1;<br>43:16;74:14<br><b>helpfulness (1)</b><br>70:9<br><b>herein (1)</b><br>64:2<br><b>high (3)</b><br>43:24,24;112:18<br><b>highest (3)</b><br>7:16,17,19<br><b>high-risk (1)</b><br>42:4<br><b>himself (1)</b><br>31:23<br><b>hired (8)</b><br>10:14;12:3;13:5,<br>13;21:4,14;25:7;<br>100:23<br><b>hold (2)</b><br>20:3;85:16<br><b>home (2)</b><br>100:9,19<br><b>honored (1)</b><br>38:6<br><b>honoring (1)</b><br>55:1<br><b>hopefully (1)</b><br>5:22<br><b>Hopkins (10)</b><br>91:5,11;101:7,12,<br>18,23;102:4,14;  | <b>idea (6)</b><br>9:21;10:8,18;<br>11:12;19:8;133:14<br><b>identification (18)</b><br>27:6;46:21;55:17,<br>25;58:18;63:8;68:22;<br>69:3,13;70:21;72:12;<br>90:7;92:6;110:8,9,<br>12;115:11;127:7<br><b>identified (4)</b><br>27:15,18;123:21;<br>132:17<br><b>identifies (1)</b><br>127:15<br><b>identify (3)</b><br>4:15;46:24;121:14<br><b>identifying (2)</b><br>73:13;122:4<br><b>Illinois (4)</b><br>7:24;8:1;20:13,15<br><b>imagine (1)</b><br>110:25<br><b>immediate (1)</b><br>124:23<br><b>immediately (3)</b><br>7:1;8:18;12:11<br><b>impacting (1)</b><br>36:8<br><b>impeached (2)</b><br>76:11,13<br><b>impeaching (1)</b><br>98:7<br><b>impeachment (2)</b><br>81:8;126:16<br><b>imperfectly (1)</b><br>99:7<br><b>improper (9)</b><br>81:7;98:6,8;<br>103:15;104:13;<br>118:23;121:4;<br>126:16;131:18<br><b>inaccurate (2)</b><br>105:19,20<br><b>inaccurately (1)</b><br>113:12<br><b>inactive (1)</b><br>19:10  | <b>inappropriate (1)</b><br>88:20<br><b>incident (5)</b><br>85:24;86:2,15,20;<br>88:5<br><b>include (1)</b><br>10:5<br><b>includes (1)</b><br>29:25<br><b>including (2)</b><br>38:8;76:22<br><b>incomplete (1)</b><br>65:25<br><b>incongruities (1)</b><br>45:8<br><b>inconsistencies (1)</b><br>45:16<br><b>inconsistent (2)</b><br>81:16,21<br><b>incredibly (2)</b><br>94:21;95:2<br><b>independent (14)</b><br>20:19;47:15;58:3;<br>67:7,10;82:3;94:12;<br>111:8;117:10;<br>119:15,22;122:17,21;<br>129:25<br><b>independently (1)</b><br>68:18<br><b>Indiana (18)</b><br>4:5,10;7:8,13;12:4;<br>13:15;15:22;16:11;<br>20:7,9,13;25:17;<br>37:4;50:8;69:5;<br>90:12;92:10;103:12<br><b>indicate (5)</b><br>92:16;101:9;103:8;<br>112:8;133:25<br><b>indicated (9)</b><br>48:7;49:20;99:14;<br>100:16,22;102:3,24;<br>103:20;115:17<br><b>indicates (4)</b><br>91:1;100:7;108:15;<br>119:24<br><b>indicating (1)</b><br>23:7<br><b>indication (2)</b><br>46:4;66:17<br><b>individual (3)</b><br>52:3,21;129:19<br><b>ineffective (13)</b><br>26:4,9,14,19;29:9,<br>17,25;30:4,10;32:1,7,<br>16,24<br><b>ineffectively (1)</b><br>32:2<br><b>inform (1)</b><br>75:2<br><b>information (32)</b><br>25:14;36:15,23;<br>41:7,22,24;45:11;<br>46:9;59:5,62:12; | 63:12,16,23;64:7,13,<br>22;65:5,22;66:8,22;<br>67:25;69:12,19;<br>70:11;71:1;73:4;<br>74:13;76:5,24;84:10,<br>22;110:16<br><b>in-house (1)</b><br>10:24<br><b>Initially (1)</b><br>15:24<br><b>innocent (1)</b><br>21:8<br><b>input (1)</b><br>45:9<br><b>inside (1)</b><br>67:2<br><b>instruction (2)</b><br>33:6,17<br><b>intend (1)</b><br>116:17<br><b>intended (1)</b><br>116:23<br><b>intentional (1)</b><br>134:8<br><b>intentionally (1)</b><br>83:3<br><b>interest (1)</b><br>18:5<br><b>interested (3)</b><br>67:13;82:7;118:4<br><b>internal (1)</b><br>85:23<br><b>interviewed (1)</b><br>73:18<br><b>interviewing (1)</b><br>73:10<br><b>into (8)</b><br>12:17;14:19;21:16;<br>36:11;50:14;56:8;<br>75:1;132:14<br><b>invalid (1)</b><br>111:12<br><b>investigated (1)</b><br>40:16<br><b>investigating (2)</b><br>63:24;70:2<br><b>investigation (4)</b><br>42:3;70:3;85:23;<br>109:1<br><b>investigative (2)</b><br>60:12,21<br><b>involved (1)</b><br>20:21<br><b>involvement (1)</b><br>55:9<br><b>involving (12)</b><br>34:11;60:22;90:11;<br>91:9;92:9;93:8;<br>102:16;123:1;<br>124:16;130:4;<br>131:15;132:7<br><b>Isolated (3)</b><br>88:2,5,7 |

|                                   |                                |                                  |                                |                                   |
|-----------------------------------|--------------------------------|----------------------------------|--------------------------------|-----------------------------------|
| issue (3)<br>25:19;38:5;52:5      | keep (1)<br>104:17             | 104:14                           | 105:7,8,24,25;                 | 117:23;121:22,23;                 |
| issued (1)<br>82:6                | key (1)<br>36:9                | LaVelle (8)<br>63:17,25;64:9,15; | 106:15;107:11;                 | 125:1,2,7,11;126:2;               |
| items (1)<br>52:1                 | kicks (1)<br>24:19             | 65:6,22;66:18;68:2               | 108:13;109:14;                 | 129:11                            |
| Ivory (2)<br>69:7,8               | killer (1)<br>114:12           | law (13)<br>7:20;8:11,13,15,     | 112:11,11;113:25;              | looked (6)<br>109:16,21;112:15,   |
|                                   |                                | 17:9;3,9,16;14:20;               | 114:2;117:24,25;               | 16,18,19                          |
|                                   |                                | 19:22;20:7;37:3;50:8             | 120:19;121:23;131:4            | looking (8)<br>72:7;92:22;103:24; |
|                                   | Kimerly (1)<br>108:18          | lawyer (4)<br>6:14;9:8;19:21;    | lined (1)<br>49:23             | 106:7;109:4;111:6;                |
| J                                 | kind (10)<br>5:22;25:15;50:14; | 6:14;9:8;19:21;                  | Lines (6)<br>93:25,25;105:9;   | 112:13;123:14                     |
|                                   | 54:23;56:6;59:24;              | 39:5                             | 106:8;108:14;126:2             | looks (11)<br>47:9;96:16,17;      |
| Jack (1)<br>12:6                  | 76:22;92:22;96:19;             | lawyers (3)<br>5:15;6:3;18:11    | lineup (4)<br>110:18;111:7,10; | 99:14;109:19;111:4;               |
| Jaminez (2)<br>114:4,12           | 102:5                          | lay (3)<br>31:9;34:24;44:19      | 112:2                          | 112:8;113:25;                     |
| January (4)<br>17:5,5;19:11;86:14 | King (26)<br>4:8;5:2,10;7:6;   | laymen's (1)<br>48:9             | lineups (1)<br>110:24          | 119:24;125:2,9                    |
| Jelks (2)<br>4:22;5:14            | 16:21;17:3,6;18:5,10,          | lead (1)<br>45:12                | link (1)<br>113:7              | Loren (2)<br>52:2;66:20           |
| Jim (1)<br>17:20                  | 12;33:4;34:24;46:23;           | least (7)<br>7:3;18:14;48:22;    | list (3)<br>60:19;91:18;       | lot (4)<br>13:20;15:15;45:3;      |
| Jiminez (1)<br>95:16              | 83:4;89:3,4,5,17;              | 49:18;61:25;95:10;               | 127:19                         | 60:1                              |
| job (4)<br>9:1;97:24,24;98:12     | 90:10;92:23;107:14;            | 121:25                           | listed (4)<br>55:18;58:1;60:7; | loud (1)<br>6:18                  |
| jobs (1)<br>94:4                  | 127:17;135:2,10                | leave (1)<br>7:1                 | 127:19                         | Louis (1)<br>7:6                  |
| jog (3)<br>5:23;104:23;109:7      | knew (2)<br>86:2;123:14        | left (5)<br>10:12;17:20;18:1;    | listen (1)<br>44:11            | lovely (1)<br>15:24               |
| John (3)<br>4:22;9:12,13          | knowledge (5)<br>67:8,10;87:2; | 97:23;98:12                      | litigants (1)<br>30:12         | low (1)<br>112:19                 |
| judge (4)<br>56:25;57:19;82:6;    | 126:22;129:25                  | legal (6)<br>4:12;7:5;9:1;       | little (2)<br>9:25;14:17       | Lyles (1)<br>18:3                 |
| 111:24                            | known (2)<br>52:3;59:10        | 10:17;11:20;84:7                 | live (4)<br>16:10,11;112:3;    |                                   |
| July (1)<br>4:6                   | knows (2)<br>75:11;76:17       | legible (1)<br>29:2              | 113:2                          | M                                 |
| juncture (1)<br>55:15             | L                              | less (1)<br>13:13                | living (1)<br>16:12            | magistrate (1)<br>82:6            |
| June (8)<br>25:1;32:4;39:24;      | labor (1)<br>11:17             | letting (1)<br>41:23             | LLC (1)<br>16:21               | main (2)<br>48:17;69:4            |
| 40:14;58:21;60:9;                 | lack (3)<br>33:5;57:9;134:2    | Levidco (1)<br>4:12              | load (2)<br>13:23;15:6         | mainly (1)<br>24:5                |
| 63:13;65:8                        | ladies (2)<br>94:2;109:4       | license (2)<br>19:13;20:7        | local (1)<br>75:22             | maintain (1)<br>32:9              |
| juries (1)<br>133:23              | Lake (5)<br>12:4;15:21,24;     | licensed (1)<br>9:8              | locale (1)<br>73:9             | majors (1)<br>8:5                 |
| jurisdiction (1)<br>26:17         | 64:6;71:20                     | licenses (1)<br>20:7             | located (3)<br>4:9;9:13;99:16  | making (9)<br>32:20;43:14;66:11;  |
| jurist (1)<br>7:19                | larger (1)<br>15:5             | lifestyle (1)<br>42:4            | location (2)<br>7:14;116:25    | 93:4;95:19,23;98:3,               |
| jurors (2)<br>59:12;94:5          | last (28)<br>7:6;15:25;27:17,  | lift (2)<br>44:3,17              | lock (1)<br>44:19              | 11;106:20                         |
| jury (31)<br>19:5;24:25;25:24;    | 17,20;28:17,19,20,             | light (1)<br>64:11               | locked (1)<br>76:7             | manager (4)<br>103:22;106:3;      |
| 26:18;39:6;52:16;                 | 23;29:7;31:11;33:1;            | likelihood (1)<br>67:1           | long (16)<br>5:18;7:14;9:23;   | 116:23;127:12                     |
| 53:7,14;55:15;56:19;              | 50:20;57:7,24;60:2;            | likely (5)<br>36:7;46:2,3;55:21; | 11:13,24;12:19,22,             | manner (2)<br>42:16;54:19         |
| 57:18;59:9;64:16,19,              | 64:4;71:3,4,12,12,13;          | 133:25                           | 24;13:1;14:6,7,16;             | many (6)<br>13:10;18:11;19:5;     |
| 22;77:2,5;94:2;                   | 113:15;118:25;                 | limations (1)<br>50:18           | 15:25;17:16;19:9;              | 29:22;43:4,4                      |
| 95:11,20,23;96:20;                | 134:16                         | limited (1)<br>37:8              | 114:6                          | March (1)<br>109:2                |
| 102:24;110:17;                    | lasted (1)<br>23:17            | line (23)<br>93:2;95:14;96:18;   | look (24)<br>28:17;33:1;44:10; | marked (26)<br>27:5,8,10;46:19,   |
| 111:15,21,23;118:21;              | late (2)<br>8:25;106:19        | 97:18,22;100:17;                 | 45:5;51:17;57:24;              | 20;58:16,17,22;63:6,              |
| 130:1,16;133:13                   | later (3)<br>79:19;100:8;      |                                  | 64:4;71:3,5;93:20,             | 7;68:21,24;70:20,23;              |
| K                                 | 135:12                         |                                  | 24;101:5;105:24;               | 72:11,14;90:4,6,10;               |
|                                   | latter (1)                     |                                  | 107:11;108:13;                 | 92:4,5;115:9,10;                  |

| 117:18;127:5,6<br><b>marketed (1)</b><br>15:12<br><b>marketing (1)</b><br>15:16<br><b>Marvin (1)</b><br>4:11<br><b>Mary (7)</b><br>72:16,19,25;73:4;<br>81:15;91:17,19<br><b>Maryland (6)</b><br>9:14,23;11:2,7;<br>20:8,9<br><b>material (4)</b><br>47:5;54:13;55:2;<br>70:4<br><b>matter (4)</b><br>4:2;5:13;52:17;<br>75:25<br><b>matters (1)</b><br>11:20<br><b>maximize (2)</b><br>30:24;31:1<br><b>Maxwell (2)</b><br>69:8,8<br><b>May (10)</b><br>28:14;42:5,13;<br>43:8;47:10;51:4;<br>56:24;60:5;63:25;<br>67:1<br><b>maybe (8)</b><br>8:24;9:25;12:16;<br>45:15;55:19;57:2,17;<br>117:10<br><b>mayor (6)</b><br>18:2;83:18;84:13,<br>15;85:11;88:8<br><b>mean (34)</b><br>8:24;13:22;24:15,<br>16;25:15;26:9;36:18;<br>37:1;38:6;39:9,12;<br>40:4,6,7;44:25;<br>47:19;54:25;56:6;<br>58:8;61:21;70:1,5;<br>72:7;75:8;77:2;81:6;<br>82:4;91:10;94:7,20,<br>22,23;114:13;116:2<br><b>means (2)</b><br>48:10;54:19<br><b>measures (1)</b><br>60:13<br><b>mechanism (1)</b><br>70:10<br><b>meet (3)</b><br>23:4;25:14;118:2<br><b>meeting (5)</b><br>21:6;23:12,17;<br>24:13;82:3<br><b>member (1)</b><br>85:21<br><b>members (6)</b><br>10:17;11:20;84:10;<br>85:21;87:3,4 | <b>memorandum (5)</b><br>27:15,17;28:18,25;<br>29:7<br><b>memorialize (1)</b><br>98:17<br><b>memory (12)</b><br>5:23;11:9;17:23;<br>23:25;73:7;76:14;<br>104:23;109:7;<br>113:10,23;123:17;<br>124:11<br><b>men (4)</b><br>103:23;106:5;<br>118:3;120:9<br><b>mention (2)</b><br>52:1;101:7<br><b>mentioned (2)</b><br>55:15;130:25<br><b>Merrillville (4)</b><br>7:13;13:6;103:11;<br>127:12<br><b>met (8)</b><br>22:9,23;24:11;<br>25:5;27:22;35:4;<br>47:13;75:17<br><b>methods (2)</b><br>40:13,16<br><b>meticulous (1)</b><br>102:4<br><b>Meyer (6)</b><br>17:18,20;18:2,5,10,<br>12<br><b>Michael (2)</b><br>4:17;5:10<br><b>mid (1)</b><br>17:25<br><b>middle (1)</b><br>7:6<br><b>might (7)</b><br>5:20,23;22:4;59:6;<br>70:2;77:1;96:3<br><b>Mike (1)</b><br>104:6<br><b>minutes (3)</b><br>22:11;23:18;89:11<br><b>mischaracterization (1)</b><br>115:21<br><b>misdeemeanor (3)</b><br>12:14,16,20<br><b>Miss (1)</b><br>132:13<br><b>misstates (6)</b><br>45:18;62:25;68:5;<br>101:17;107:6;128:13<br><b>Mister (1)</b><br>60:13<br><b>mix (1)</b><br>11:23<br><b>months (2)</b><br>14:7,7<br><b>Moos (31)</b><br>91:5;115:15;116:1,<br>4,8,17,22;117:4,12, | 20;118:20;119:6,25;<br>120:3,8;121:1,7,12;<br>122:4,23;123:20;<br>124:14;125:5,13,19;<br>126:4,10,22;130:13,<br>14;132:12<br><b>Moos's (3)</b><br>118:6,8;123:25<br><b>more (12)</b><br>9:25;14:17;15:14;<br>22:17;36:21;45:6;<br>46:4;51:1;67:15;<br>82:1;84:10;85:21<br><b>morning (3)</b><br>74:6,6;94:3<br><b>Morse (4)</b><br>9:12,13,24;10:12<br><b>most (5)</b><br>15:19;44:21;55:21;<br>133:22,25<br><b>mother (12)</b><br>21:5,14,19;24:12;<br>25:5,23;35:5;100:22;<br>101:1,2,3,4<br><b>motion (11)</b><br>47:3,4;63:11,22;<br>64:6,21,23,24,24;<br>65:2;112:3<br><b>motions (4)</b><br>22:18,19;44:21,21<br><b>motivating (1)</b><br>76:20<br><b>moved (3)</b><br>15:20,21;16:2<br><b>moving (1)</b><br>21:11<br><b>Mrs (12)</b><br>72:5;79:11;102:17;<br>110:7,8;123:23,24;<br>124:17;130:5;<br>131:16;132:7,8<br><b>much (8)</b><br>25:25;37:20;38:1,<br>10;54:14;120:9,23;<br>135:10<br><b>Murdaugh (2)</b><br>16:21;17:8<br><b>murder (13)</b><br>25:16,17,20;33:6,<br>19;34:20;35:11,14;<br>44:2;61:15,17,20;<br>103:5<br><b>murdered (1)</b><br>95:17<br><b>Murdo (1)</b><br>17:9<br><b>Murdock (2)</b><br>17:3,7<br><b>must (1)</b><br>94:20<br><b>myself (1)</b><br>32:13 | <table><tr><th>N</th></tr><tr><td><b>name (19)</b><br/>4:11,17;5:10;7:5,6,<br/>6;9:22;10:18,21;<br/>21:22;22:1;59:24;<br/>66:19;67:3,17;73:2;<br/>91:10;122:4;129:23<br/><b>named (2)</b><br/>9:12;133:4<br/><b>names (6)</b><br/>21:17,24;59:10,12;<br/>91:13;130:25<br/><b>narrative (2)</b><br/>21:3;92:17<br/><b>nature (1)</b><br/>9:10<br/><b>near (1)</b><br/>13:8<br/><b>necessarily (6)</b><br/>5:20;29:3;30:5,17;<br/>56:24;134:25<br/><b>need (5)</b><br/>6:23;33:24;39:13,<br/>14;62:13<br/><b>needed (2)</b><br/>7:9;39:17<br/><b>needs (1)</b><br/>61:13<br/><b>negating (1)</b><br/>55:8<br/><b>negatively (1)</b><br/>36:8<br/><b>neighborhood (3)</b><br/>114:5,8;115:1<br/><b>new (1)</b><br/>64:25<br/><b>newly-elected (1)</b><br/>12:4<br/><b>next (3)</b><br/>12:2;33:14;118:13<br/><b>nickname (1)</b><br/>97:6<br/><b>night (7)</b><br/>95:18;102:16;<br/>106:4,16;108:19;<br/>112:17;114:6<br/><b>nights (1)</b><br/>106:18<br/><b>nobody (1)</b><br/>34:8<br/><b>nods (1)</b><br/>6:19<br/><b>nondisclosure (1)</b><br/>134:8<br/><b>nonparty (2)</b><br/>41:3;69:21<br/><b>Nor (1)</b><br/>112:25<br/><b>norm (1)</b><br/>30:13<br/><b>normal (1)</b></td></tr></table> | N | <b>name (19)</b><br>4:11,17;5:10;7:5,6,<br>6;9:22;10:18,21;<br>21:22;22:1;59:24;<br>66:19;67:3,17;73:2;<br>91:10;122:4;129:23<br><b>named (2)</b><br>9:12;133:4<br><b>names (6)</b><br>21:17,24;59:10,12;<br>91:13;130:25<br><b>narrative (2)</b><br>21:3;92:17<br><b>nature (1)</b><br>9:10<br><b>near (1)</b><br>13:8<br><b>necessarily (6)</b><br>5:20;29:3;30:5,17;<br>56:24;134:25<br><b>need (5)</b><br>6:23;33:24;39:13,<br>14;62:13<br><b>needed (2)</b><br>7:9;39:17<br><b>needs (1)</b><br>61:13<br><b>negating (1)</b><br>55:8<br><b>negatively (1)</b><br>36:8<br><b>neighborhood (3)</b><br>114:5,8;115:1<br><b>new (1)</b><br>64:25<br><b>newly-elected (1)</b><br>12:4<br><b>next (3)</b><br>12:2;33:14;118:13<br><b>nickname (1)</b><br>97:6<br><b>night (7)</b><br>95:18;102:16;<br>106:4,16;108:19;<br>112:17;114:6<br><b>nights (1)</b><br>106:18<br><b>nobody (1)</b><br>34:8<br><b>nods (1)</b><br>6:19<br><b>nondisclosure (1)</b><br>134:8<br><b>nonparty (2)</b><br>41:3;69:21<br><b>Nor (1)</b><br>112:25<br><b>norm (1)</b><br>30:13<br><b>normal (1)</b> | 37:25<br><b>normally (8)</b><br>35:8;37:20;53:24;<br>61:7,8;93:17,19;<br>99:15<br><b>North (2)</b><br>20:18;69:4<br><b>Northern (5)</b><br>4:4;13:14;20:12,<br>13,14<br><b>notably (1)</b><br>44:21<br><b>note (1)</b><br>132:16<br><b>noted (1)</b><br>129:10<br><b>notice (17)</b><br>41:1;47:3,20;48:2;<br>49:25;50:1,7,13,24;<br>51:3,17;54:1;60:4,<br>18;97:7;102:20;<br>127:23<br><b>noticing (1)</b><br>4:16<br><b>number (6)</b><br>4:5;6:15,16;7:15;<br>129:20,20<br><b>numeral (2)</b><br>28:21;33:2 |
|---|--|--|--|---|---|--|
| N   |  |  |  |   |   |  |
| <b>name (19)</b><br>4:11,17;5:10;7:5,6,<br>6;9:22;10:18,21;<br>21:22;22:1;59:24;<br>66:19;67:3,17;73:2;<br>91:10;122:4;129:23<br><b>named (2)</b><br>9:12;133:4<br><b>names (6)</b><br>21:17,24;59:10,12;<br>91:13;130:25<br><b>narrative (2)</b><br>21:3;92:17<br><b>nature (1)</b><br>9:10<br><b>near (1)</b><br>13:8<br><b>necessarily (6)</b><br>5:20;29:3;30:5,17;<br>56:24;134:25<br><b>need (5)</b><br>6:23;33:24;39:13,<br>14;62:13<br><b>needed (2)</b><br>7:9;39:17<br><b>needs (1)</b><br>61:13<br><b>negating (1)</b><br>55:8<br><b>negatively (1)</b><br>36:8<br><b>neighborhood (3)</b><br>114:5,8;115:1<br><b>new (1)</b><br>64:25<br><b>newly-elected (1)</b><br>12:4<br><b>next (3)</b><br>12:2;33:14;118:13<br><b>nickname (1)</b><br>97:6<br><b>night (7)</b><br>95:18;102:16;<br>106:4,16;108:19;<br>112:17;114:6<br><b>nights (1)</b><br>106:18<br><b>nobody (1)</b><br>34:8<br><b>nods (1)</b><br>6:19<br><b>nondisclosure (1)</b><br>134:8<br><b>nonparty (2)</b><br>41:3;69:21<br><b>Nor (1)</b><br>112:25<br><b>norm (1)</b><br>30:13<br><b>normal (1)</b>   |  |  |  |   |   |  |
| O   |  |  |  |   |   |  |
| oath (3)<br>41:1;80:23;81:15<br>obey (1)<br>99:5<br>Object (90)<br>19:17;21:2;26:25;<br>29:11,18;30:19;32:5,<br>18;33:5,9,16,19,23,<br>25;35:17,24;37:23;<br>39:8,25;41:10;43:19;<br>45:17;46:10;47:2,22;<br>48:19;49:11;51:14;<br>52:12;53:10;54:5;<br>56:21;57:4;60:24;<br>61:10,18,24;64:17;<br>65:24;68:4;69:14,22;<br>79:17;81:19,22;<br>82:10;83:8,21;84:2,<br>18,24;85:14,17;86:5,<br>21,25;87:13,20;<br>88:13;92:15;94:10;<br>97:10;98:5;101:16;<br>103:14;110:10;<br>111:14,19;113:9;<br>115:3;116:12;<br>117:14;119:10,18;<br>120:6,12;121:3,19;<br>122:8;123:4,11;<br>124:19;125:24;<br>126:15;128:3,12;<br>130:8;131:17;132:9,  |  |  |  |   |   |  |



|  |   |  |   |  |
|--|---|--|---|--|
| 24<br><b>objecting (2)</b><br>104:6,17<br><b>objection (33)</b><br>19:23;26:7,11;<br>27:4;29:1,18;30:6;<br>31:14;33:17;34:2;<br>36:16;38:16;53:16;<br>59:17;62:10,23;65:9;<br>79:4,16;80:24;85:17;<br>88:23;98:9,25;99:6;<br>20:102:9;104:5;<br>115:20;118:22;<br>124:7;130:18;133:17<br><b>objections (6)</b><br>34:15;82:19,25;<br>100:12;102:19;<br>106:10<br><b>obligation (5)</b><br>6:24,25;55:1;67:6;<br>134:25<br><b>obtain (2)</b><br>36:22;41:22<br><b>obviates (1)</b><br>37:15<br><b>obviously (3)</b><br>7:2;21:6;95:9<br><b>occasion (1)</b><br>118:2<br><b>occurred (9)</b><br>25:1,24;51:10;<br>102:17;103:5;117:1;<br>121:18;122:7;131:16<br><b>occurring (1)</b><br>73:9<br><b>off (19)</b><br>7:4;12:11,13,13;<br>24:19;28:24;43:12;<br>49:5;51:2;59:12;<br>76:19,22;89:8;<br>109:23;114:15;<br>116:15;117:9;<br>134:19,20<br><b>offense (1)</b><br>38:22<br><b>offenses (5)</b><br>52:5;55:9;58:9;<br>66:9;108:24<br><b>offer (5)</b><br>47:23;48:1;54:4;<br>58:6;116:17<br><b>offered (4)</b><br>10:16,17;13:11;<br>14:9<br><b>offering (1)</b><br>52:19<br><b>office (24)</b><br>7:12;12:12;13:12;<br>17:14;4:24;17:21;<br>18:1;19:12;21:16;<br>22:11;51:4;64:7,15;<br>65:6,11;68:2;69:2;<br>71:2;72:16;75:23; | 86:12;87:7;135:4<br><b>officer (11)</b><br>43:6,9,12;44:20;<br>45:5;62:4;76:16;<br>77:12;80:18;87:24;<br>88:3<br><b>officers (2)</b><br>43:1,2<br><b>Oltman (1)</b><br>4:11<br><b>once (6)</b><br>9:7;25:5;52:16;<br>84:13;86:2;88:8<br><b>one (43)</b><br>11:6,6;21:18;<br>22:17;32:23;36:25;<br>37:10;41:21;47:12;<br>48:16,16,22;49:1,18;<br>51:5,5;52:1,2;61:25;<br>62:3,19;67:15;75:1;<br>84:10;85:21;91:16;<br>93:12,15,20;102:2;<br>103:24;106:5,18;<br>112:5,20,21;116:9;<br>118:3;120:21;<br>126:17;127:18;<br>131:11;132:15<br><b>one-man (1)</b><br>95:17<br><b>one's (1)</b><br>38:21<br><b>ongoing (1)</b><br>38:7<br><b>only (4)</b><br>21:25;28:6;52:7;<br>114:4<br><b>open (8)</b><br>17:3;58:11;77:13;<br>106:14,19;109:25;<br>120:25;125:13<br><b>opened (5)</b><br>14:20,22;15:8;<br>16:15;42:7<br><b>opening (52)</b><br>92:12;93:5,7,18,<br>23;94:17,24;96:7,10,<br>11,15,20,22,25;97:8,<br>19;98:11,18,20;<br>100:11,16;101:7;<br>102:3,24;103:8,13;<br>104:2,9,25;105:6,11;<br>106:15,23;108:4,9,<br>12,16;109:12,19,25;<br>110:2;111:5;112:9,<br>12;113:6,11;114:1,<br>20,24;130:15,20,24<br><b>operate (1)</b><br>38:4<br><b>opinion (6)</b><br>32:6,19;41:14;<br>77:17;82:5;111:20<br><b>opinions (2)</b><br>24:8,9 | <b>opponent (2)</b><br>41:23;42:20<br><b>opportunity (4)</b><br>30:25;31:1;125:4,9<br><b>opposed (2)</b><br>49:16;120:21<br><b>opposing (1)</b><br>41:23<br><b>option (1)</b><br>93:4<br><b>options (1)</b><br>108:2<br><b>order (9)</b><br>38:13;39:6;44:11;<br>54:11,11;63:11,22;<br>64:5;68:6<br><b>ordered (2)</b><br>64:13;68:1<br><b>organization (3)</b><br>82:9,17,23<br><b>organized (3)</b><br>6:1;15:2,5<br><b>originally (1)</b><br>7:22<br><b>others (2)</b><br>86:18;88:4<br><b>otherwise (1)</b><br>50:16<br><b>out (23)</b><br>6:18,20;20:3;23:9;<br>42:8;45:15;49:2,8;<br>56:2,13,16,19;80:14,<br>22;89:3;90:1;102:6,<br>18;111:3;116:21;<br>121:10;129:16;131:6<br><b>outburst (2)</b><br>94:25;95:7<br><b>outcome (1)</b><br>54:18<br><b>Outlaw (4)</b><br>4:3,20;5:14;75:4<br><b>outline (2)</b><br>96:16,19<br><b>outlined (1)</b><br>97:17<br><b>outset (1)</b><br>24:15<br><b>outside (5)</b><br>5:11;20:7;69:18;<br>79:13;111:23<br><b>over (20)</b><br>6:5,6,12,12;17:24;<br>23:20;27:23;47:13;<br>50:14;55:2;60:3;<br>79:15,18;88:17;<br>105:8;106:8;108:14,<br>23;118:16;128:21<br><b>own (6)</b><br>14:20,20,22;15:8;<br>16:15;38:21 | <b>page (61)</b><br>27:17,17,20;28:15,<br>18,20,23;29:7;31:11;<br>33:1;51:17;55:3;<br>57:25;64:4;71:4,13;<br>90:20,21;92:14,25;<br>93:24,25;96:18;<br>97:17;101:6;103:12,<br>25;104:1;105:4,7,8,<br>24;106:8,14;107:11;<br>108:11,15,23;109:14;<br>112:8;113:24;<br>115:16,17;117:17,23;<br>118:16;119:25;<br>120:19;121:22;<br>125:1,2,7,11;126:2;<br>127:13;128:15,20,23;<br>129:11;131:1,23<br><b>paper (1)</b><br>104:8<br><b>paragraph (4)</b><br>33:3;51:18;63:17,<br>22<br><b>paraphrase (1)</b><br>113:13<br><b>Park (1)</b><br>100:20<br><b>part (39)</b><br>5:18;10:16;13:23;<br>29:8;30:11;35:3;<br>45:20,20,23;49:6;<br>50:20,25;52:6;54:11;<br>55:10;57:7,24;65:1,<br>7;70:3;82:1,8,16;<br>87:2;92:8;95:17,22;<br>97:14,16;101:10;<br>102:13;103:2;107:3;<br>109:24;111:1;<br>113:15;118:25;<br>127:9;134:17<br><b>particular (7)</b><br>22:14;43:11;54:20;<br>75:5;85:7;95:6;134:7<br><b>particularly (5)</b><br>30:12;36:9;44:8;<br>94:6,14<br><b>partner (5)</b><br>16:23,24;23:6;<br>78:11;79:13<br><b>partners (2)</b><br>17:2,12<br><b>partnership (2)</b><br>17:6,22<br><b>partnerships (1)</b><br>16:25<br><b>parts (2)</b><br>90:10,13<br><b>party (1)</b><br>4:15<br><b>passage (1)</b><br>36:6<br><b>passed (2)</b><br>8:21;9:7 | <b>Past (3)</b><br>21:24;107:19;<br>131:25<br><b>pathologist (2)</b><br>44:1,6<br><b>Paul (6)</b><br>103:10,17,22;<br>106:3,17;127:12<br><b>pay (2)</b><br>120:9,22<br><b>paying (1)</b><br>72:4<br><b>PCR (3)</b><br>79:19;81:25;82:2<br><b>people (9)</b><br>34:1;44:19;45:10;<br>94:15;97:2;114:8;<br>127:18;129:16;<br>130:14<br><b>perceive (1)</b><br>45:23<br><b>percent (1)</b><br>24:17<br><b>percentage (1)</b><br>10:8<br><b>perform (1)</b><br>26:16<br><b>performance (1)</b><br>33:15<br><b>Perhaps (1)</b><br>56:5<br><b>peril (1)</b><br>42:14<br><b>period (7)</b><br>15:7;18:7;24:13;<br>36:22;39:3;106:17;<br>114:9<br><b>periodically (1)</b><br>87:5<br><b>periods (1)</b><br>60:21<br><b>perpetrated (1)</b><br>73:15<br><b>perpetrator (3)</b><br>52:5;53:8;108:23<br><b>person (26)</b><br>30:16;35:14;36:25;<br>50:3;52:2,2,4,10;<br>67:20;68:3;73:15;<br>109:20,23;112:22;<br>114:10;121:14,16;<br>122:4,5,24;123:21;<br>125:16,21;126:7,23;<br>127:20<br><b>personally (2)</b><br>18:21;31:7<br><b>personnel (1)</b><br>107:16<br><b>person's (2)</b><br>24:18;37:5<br><b>pertaining (1)</b><br>64:9<br><b>peruse (1)</b> |
|  |   | <b>P</b>   |   |  |

|   |   |   |  |  |
|---|---|---|--|--|
| 92:13<br><b>petition (7)</b><br>25:18;27:11;28:7,<br>13;31:1;44:3,16<br><b>Petitioner's (1)</b><br>28:12<br><b>phases (1)</b><br>32:13<br><b>Phil (1)</b><br>125:3<br><b>photo (1)</b><br>67:17<br><b>photograph (5)</b><br>67:12,19;109:5,22,<br>23<br><b>photographic (1)</b><br>112:3<br><b>photographs (5)</b><br>69:7;70:4;109:5,<br>16;111:6<br><b>physical (6)</b><br>55:8;56:7;67:15;<br>110:24;113:7;134:3<br><b>pick (4)</b><br>15:23;108:20;<br>121:16;129:16<br><b>picked (1)</b><br>129:19<br><b>picture (4)</b><br>121:12,13,24;<br>129:17<br><b>piece (1)</b><br>112:21<br><b>place (16)</b><br>24:14;37:3;48:6,6;<br>51:8;53:7;57:21;<br>76:1;114:25;120:24;<br>123:2,23;124:17;<br>130:6;132:5,8<br><b>plaintiff (2)</b><br>4:24;116:19<br><b>plaintiff's (2)</b><br>22:10,24<br><b>plan (2)</b><br>10:16;96:20<br><b>planned (1)</b><br>59:15<br><b>plans (1)</b><br>102:5<br><b>plea (2)</b><br>28:1;44:13<br><b>pleading (2)</b><br>58:22;127:24<br><b>please (7)</b><br>4:14;5:1;46:25;<br>118:25;119:2;124:3;<br>134:17<br><b>plural (2)</b><br>49:15;100:25<br><b>plus (1)</b><br>24:17<br><b>pm (8)</b><br>4:7;89:9,14;97:23; | 98:13;120:1;134:19;<br>135:12<br><b>Point (6)</b><br>16:1;56:3;69:4;<br>75:24;122:16,20<br><b>pointed (4)</b><br>56:2,13,16,19<br><b>pointing (1)</b><br>111:3<br><b>police (35)</b><br>22:19;42:25;43:1,<br>9;44:20;62:4;65:19;<br>67:2;73:11,18;74:9;<br>75:17;76:16;77:6;<br>78:2,14,15;79:13;<br>80:15,18;84:11;<br>85:11,15,21;86:9,9;<br>87:3,4,9;108:25;<br>110:19,23;111:3,11;<br>112:13<br><b>policewoman (2)</b><br>72:23;73:1<br><b>policy (1)</b><br>88:19<br><b>Pontiac (9)</b><br>103:11,17;106:17;<br>107:15,17;115:15;<br>116:23,24;127:12<br><b>portion (1)</b><br>128:6<br><b>portions (1)</b><br>22:15<br><b>position (9)</b><br>9:3;10:25;11:10;<br>12:2,9;13:11;14:9,<br>10;132:20<br><b>positively (1)</b><br>132:17<br><b>possession (1)</b><br>69:7<br><b>possible (8)</b><br>6:13;54:15;70:7;<br>80:5,8;81:10,14,23<br><b>possibly (1)</b><br>57:15<br><b>post (12)</b><br>22:16,19;27:11,16;<br>28:1,4,13;29:23;<br>79:22;80:1,20;81:25<br><b>potential (1)</b><br>59:12<br><b>potentially (2)</b><br>46:8;59:6<br><b>power (2)</b><br>84:21;85:3<br><b>practice (23)</b><br>9:19;10:4,5,10;<br>11:17;14:19;15:18;<br>16:15;18:19;35:12,<br>13,15,21;38:11;<br>40:22;42:10;43:1;<br>55:19;71:19;87:11,<br>15;88:10,19 | <b>practiced (1)</b><br>11:14<br><b>practicing (6)</b><br>6:15;8:18,22,23;<br>9:9;19:9<br><b>practitioner (5)</b><br>9:8,16,17;17:14;<br>18:9<br><b>pre (1)</b><br>22:18<br><b>precise (2)</b><br>51:1;73:16<br><b>prejudice (1)</b><br>38:25<br><b>preparation (3)</b><br>32:3;72:2;74:11<br><b>prepare (1)</b><br>62:9<br><b>prepared (5)</b><br>27:12;31:7,7,23;<br>59:9<br><b>preparing (4)</b><br>21:12;26:5;43:17;<br>61:1<br><b>presence (1)</b><br>77:2<br><b>present (3)</b><br>6:3;23:25;52:16<br><b>presented (5)</b><br>55:11,24;111:7;<br>114:7;133:6<br><b>presenting (1)</b><br>48:5<br><b>presently (1)</b><br>105:23<br><b>pressing (1)</b><br>6:24<br><b>pressure (2)</b><br>75:3;77:7<br><b>pressured (4)</b><br>77:14;79:12;80:13;<br>88:4<br><b>pretrial (2)</b><br>32:8;44:21<br><b>pretty (1)</b><br>25:25<br><b>previous (3)</b><br>114:15;127:22;<br>130:23<br><b>previously (1)</b><br>118:24<br><b>Price (2)</b><br>58:1;91:4<br><b>prices (2)</b><br>108:1,1<br><b>primarily (1)</b><br>18:20<br><b>principal (1)</b><br>16:22<br><b>Principally (2)</b><br>14:2;15:5<br><b>prior (1)</b><br>42:7 | <b>private (1)</b><br>14:19<br><b>privately (1)</b><br>77:16<br><b>pro (5)</b><br>20:17;29:22,24;<br>30:12,16<br><b>probable (1)</b><br>25:13<br><b>probably (8)</b><br>6:16;19:7;36:18;<br>40:19;50:8;53:1;<br>66:19;79:19<br><b>problem (1)</b><br>77:4<br><b>problems (2)</b><br>110:18,22<br><b>procedure (3)</b><br>88:19;110:18;<br>111:4<br><b>procedures (1)</b><br>111:10<br><b>proceeded (1)</b><br>75:2<br><b>proceeding (3)</b><br>22:16;28:8;81:25<br><b>proceedings (3)</b><br>4:16;56:3;135:11<br><b>produced (2)</b><br>64:14;68:1<br><b>production (2)</b><br>47:5;69:6<br><b>professional (4)</b><br>5:12;6:6,25;17:23<br><b>program (1)</b><br>8:3<br><b>prohibitions (1)</b><br>15:16<br><b>prompted (2)</b><br>73:20;80:16<br><b>proofing (1)</b><br>52:25<br><b>properly (1)</b><br>62:9<br><b>proposition (1)</b><br>56:1<br><b>prosecution (1)</b><br>50:1<br><b>prosecutions (1)</b><br>133:23<br><b>Prosecutor (9)</b><br>12:4,10;44:9;<br>54:12,12,21;59:5;<br>78:18;79:2<br><b>prosecutors (1)</b><br>77:12<br><b>prosecutor's (7)</b><br>12:12;13:12,16;<br>14:4;51:4;75:12,23<br><b>protocol (1)</b><br>25:16<br><b>provide (3)</b><br>59:4;60:12;66:8 | <b>provided (2)</b><br>32:9,16<br><b>providing (1)</b><br>67:4<br><b>public (2)</b><br>19:12;76:22<br><b>purchase (2)</b><br>101:14,15<br><b>purchasing (1)</b><br>118:5<br><b>purport (1)</b><br>38:5<br><b>purportedly (2)</b><br>67:12,19<br><b>purpose (3)</b><br>47:20;50:5;96:22<br><b>purses (1)</b><br>112:16<br><b>pursuant (1)</b><br>41:1<br><b>put (13)</b><br>5:22;53:22,24;<br>54:3;57:17,18;73:20;<br>76:19;90:16;110:14,<br>17,18;133:13<br><b>putting (4)</b><br>50:1;77:6;110:21;<br>111:9 |
| <b>Q</b>  |   |   |  |  |
| <b>quartered (1)</b><br>10:15<br><b>quickly (2)</b><br>6:12;111:5<br><b>quote (2)</b><br>75:10;108:16<br><b>quote-unquote (1)</b><br>52:9   |   |   |  |  |
| <b>R</b>  |   |   |  |  |
| <b>raised (1)</b><br>48:17<br><b>raising (1)</b><br>51:6<br><b>range (1)</b><br>38:20<br><b>ranged (1)</b><br>11:21<br><b>rather (3)</b><br>30:13;39:20;75:10<br><b>read (23)</b><br>25:12;31:15;45:4;<br>59:11;82:3,5;105:8;<br>107:4,12;111:1;<br>113:11,17;116:13;<br>119:1,3;122:9,12;<br>123:12;124:3,4;<br>126:3;128:6;131:19<br><b>reading (4)</b><br>109:7,24;116:15;<br>123:8  |   |   |  |  |



|  |  |  |   |   |
|--|--|--|---|---|
| <b>ready (8)</b><br>26:1;39:24;40:13;<br>60:13,22;61:1,6;<br>68:14<br><b>reality (2)</b><br>45:20;134:2<br><b>realized (1)</b><br>88:18<br><b>really (1)</b><br>126:8<br><b>reason (10)</b><br>96:8;97:9;98:22;<br>99:9;105:21,23;<br>107:3;119:16;126:9,<br>20<br><b>reasonable (1)</b><br>66:25<br><b>reasonably (1)</b><br>46:2<br><b>reasons (1)</b><br>118:23<br><b>recall (102)</b><br>11:11,16,24;12:24;<br>13:2;21:5;24:4,21;<br>25:19;29:20;33:20;<br>35:7,9,10;40:5,8,15,<br>21;47:15;49:5,10,15;<br>52:18,19;53:15,17,<br>19;56:11;58:8;60:10,<br>20,25;62:7,15,17,21,<br>22,24;63:4;65:1,4,5,<br>14,19;67:13,23;<br>69:18;70:15,18;71:8,<br>25;72:4,19,24,25;<br>73:10,17,24;74:1;<br>79:25;80:4;90:15;<br>91:8,22;93:7,9,15;<br>94:13;95:3,4,6,19,21,<br>22;98:3,11;106:4,20;<br>110:14,16,25;117:12;<br>119:11;120:24;<br>121:20;122:3,3,22;<br>123:25;124:11,13;<br>125:13,19,25;126:21;<br>127:25;128:20,23,25;<br>129:24;131:7;132:3<br><b>recant (1)</b><br>76:10<br><b>recess (1)</b><br>89:12<br><b>recipe (1)</b><br>134:9<br><b>recognizance (1)</b><br>38:21<br><b>recognize (8)</b><br>29:4;91:13;125:16,<br>20;126:6;127:24;<br>129:15;131:5<br><b>recollect (2)</b><br>13:8;107:18<br><b>recollection (41)</b><br>20:20,24;21:1,4;<br>22:5;31:5;33:8,13; | 40:10;47:16;52:24;<br>58:4;59:13;67:18;<br>70:6;73:3,16,19;<br>91:12,14;102:13;<br>105:10,14,16;110:1;<br>111:8;113:4;114:17;<br>116:3;117:11;118:7,<br>14;119:15,22;120:2;<br>121:6,11;122:19,21;<br>123:6;126:17<br><b>record (16)</b><br>4:2,14;7:5;27:10;<br>46:25;49:24;54:14;<br>89:9,14,16;104:16;<br>129:23;134:19,21,23,<br>23<br><b>recorded (1)</b><br>42:8<br><b>records (1)</b><br>69:19<br><b>refer (4)</b><br>96:24;97:2,3,7<br><b>reference (1)</b><br>28:6<br><b>referenced (4)</b><br>92:1,2;131:23;<br>132:15<br><b>references (1)</b><br>59:19<br><b>referring (1)</b><br>96:3<br><b>reflected (2)</b><br>107:13;109:11<br><b>reflection (1)</b><br>82:1<br><b>reflects (10)</b><br>99:19,21,22;<br>100:18;105:2;108:8;<br>109:18;110:6;<br>113:25;114:23<br><b>refresh (9)</b><br>22:5;105:14,15;<br>107:2;110:1;113:4,<br>10,23;114:16<br><b>refreshed (2)</b><br>123:17;124:12<br><b>refreshes (1)</b><br>105:10<br><b>refreshing (2)</b><br>98:7;126:16<br><b>regarding (14)</b><br>15:16;20:20;22:5,<br>16;63:16;64:14,15;<br>65:6,22;66:9;67:11;<br>105:12;108:5,9<br><b>regardless (1)</b><br>38:22<br><b>related (5)</b><br>6:9;27:25;28:3;<br>64:23;114:24<br><b>relates (3)</b><br>30:7;86:19;110:7<br><b>relation (1)</b> | 74:10<br><b>relationship (1)</b><br>9:11<br><b>relative (1)</b><br>36:4<br><b>relatively (3)</b><br>40:22,23;43:24<br><b>release (8)</b><br>38:21;63:11,16,23;<br>64:7,21;74:2,24<br><b>released (2)</b><br>74:16;75:13<br><b>relevance (11)</b><br>35:18,24;82:13;<br>83:22;84:19;85:18;<br>87:1;94:11;102:10;<br>103:15;132:25<br><b>relevant (2)</b><br>41:8;56:25<br><b>relief (11)</b><br>22:16;27:12,16;<br>28:1,5,13;29:8,23;<br>79:22;80:1,21<br><b>remarkably (1)</b><br>114:10<br><b>remarks (1)</b><br>94:17<br><b>remedial (1)</b><br>87:6<br><b>remedy (2)</b><br>38:20,20<br><b>remember (52)</b><br>5:20;6:17;9:1,10;<br>12:7,19;14:13;17:19;<br>18:6,13;21:6,7,17,22,<br>24,25;22:1,9;24:1,12;<br>25:8;47:14;53:6;<br>55:10,13;67:18;<br>68:12,17;69:8,11,16;<br>74:9;96:2,4;99:24;<br>102:7;104:19;105:1,<br>11;106:4,5;107:22,<br>23,24,25;108:3;<br>110:21;118:18,19;<br>119:7;129:4;130:19<br><b>remembered (1)</b><br>103:23<br><b>remembers (2)</b><br>104:8,24<br><b>remotely (1)</b><br>112:22<br><b>repeat (2)</b><br>60:15;118:25<br><b>rephrase (3)</b><br>40:12;53:5;60:17<br><b>replace (1)</b><br>86:15<br><b>replaced (1)</b><br>86:9<br><b>Report (2)</b><br>78:13;84:14<br><b>reported (3)</b><br>78:12;79:1;100:13 | <b>reporter (11)</b><br>4:13;5:1,7;6:4,18,<br>21;33:24;34:5;99:6;<br>119:3;124:4<br><b>Reporters (1)</b><br>4:14<br><b>reports (5)</b><br>22:19,20;24:5;<br>43:3,7<br><b>represent (3)</b><br>4:18;39:7;41:9<br><b>representation (5)</b><br>5:16;6:7;10:17;<br>35:3;130:23<br><b>represented (4)</b><br>28:9;91:3;98:19;<br>115:6<br><b>representing (2)</b><br>4:12,22<br><b>reputation (2)</b><br>54:22,22<br><b>request (7)</b><br>28:4;29:8;35:16;<br>37:10;38:13;63:15;<br>66:7<br><b>requested (1)</b><br>35:5<br><b>requesting (2)</b><br>69:12,18<br><b>requests (1)</b><br>69:6<br><b>require (1)</b><br>50:16<br><b>required (1)</b><br>37:3<br><b>requirement (1)</b><br>50:25<br><b>requires (1)</b><br>7:1<br><b>requisite (1)</b><br>72:4<br><b>reschedule (1)</b><br>135:1<br><b>reside (3)</b><br>7:7;16:3,6<br><b>residence (2)</b><br>15:23;100:19<br><b>respect (1)</b><br>49:18<br><b>respectful (1)</b><br>134:12<br><b>responding (2)</b><br>45:5;74:23<br><b>response (4)</b><br>47:6;68:11;74:7;<br>124:23<br><b>restraining (1)</b><br>43:6<br><b>reveal (1)</b><br>64:1<br><b>review (6)</b><br>22:4,8;117:9;<br>119:7;122:21;132:11 | <b>reviewed (2)</b><br>47:16;102:23<br><b>reviewing (1)</b><br>92:24<br><b>Rhonda (6)</b><br>62:15,18,21;<br>108:17;114:3,13<br><b>Ricardo (1)</b><br>4:19<br><b>Richard (3)</b><br>91:5;127:11,16<br><b>Rick (3)</b><br>103:21;105:12;<br>106:1<br><b>right (64)</b><br>6:10,22;7:3;8:11,<br>23;11:5;12:25;13:4,<br>21;16:8,19;19:5;<br>22:3;25:2;31:20;<br>32:23;34:7,10;36:25;<br>37:10;48:15;50:9;<br>53:3;62:21;63:19;<br>66:21,23,25;72:24;<br>74:17;75:24;76:11;<br>84:1;85:10;88:17;<br>89:10,22,24;90:9;<br>92:8,19;97:16;99:24;<br>100:1;101:23,25;<br>105:15;115:13;<br>118:1;120:20;<br>121:22;122:1,2,16,<br>18,20;123:9,14;<br>124:6;127:4,9;129:2;<br>134:11;135:6<br><b>rings (2)</b><br>59:24;73:2<br><b>risk (1)</b><br>75:10<br><b>River (1)</b><br>8:1<br><b>robbed (1)</b><br>114:9<br><b>robber (1)</b><br>114:12<br><b>robberies (3)</b><br>67:17;103:3;<br>114:25<br><b>robbery (4)</b><br>33:6;35:11,15;<br>114:3<br><b>robbery-murder (1)</b><br>114:4<br><b>Roman (2)</b><br>28:21;33:2<br><b>Ron (1)</b><br>115:15<br><b>Ronald (1)</b><br>91:5<br><b>room (2)</b><br>23:2;31:4<br><b>rooms (1)</b><br>75:1<br><b>routine (1)</b> |
|--|--|--|---|---|

|   |   |  |   |  |
|---|---|--|---|--|
| 11:20<br><b>Rule (4)</b><br>37:4,4,17;38:24<br><b>rules (1)</b><br>75:22<br><b>run (1)</b><br>75:10 | 71:8<br><b>sense (1)</b><br>113:20<br><b>sent (5)</b><br>69:2;71:1;72:16;<br>75:13;91:16<br><b>sentence (2)</b><br>33:14;94:13<br><b>September (1)</b><br>89:24<br><b>serious (2)</b><br>77:23,25<br><b>serology (1)</b><br>134:5<br><b>served (1)</b><br>7:12<br><b>serves (4)</b><br>11:9;17:23;73:7;<br>76:14<br><b>set (5)</b><br>23:11,13,13;54:11,<br>20<br><b>setting (3)</b><br>5:12;76:22;81:11<br><b>several (1)</b><br>79:18<br><b>shaky (1)</b><br>45:13<br><b>shall (1)</b><br>42:3<br><b>shared (1)</b><br>100:20<br><b>shares (1)</b><br>16:25<br><b>Sharon (2)</b><br>100:21,24<br><b>Sheila (7)</b><br>21:18,22,25;91:4,<br>10;100:21,24<br><b>shopping (9)</b><br>49:2,9,20;58:11;<br>99:17;102:18;103:1,<br>2;116:21<br><b>shorten (1)</b><br>36:14<br><b>shorter (1)</b><br>36:22<br><b>Shortly (1)</b><br>25:14<br><b>shot (1)</b><br>114:6<br><b>show (23)</b><br>24:2;27:8;34:25;<br>46:18;58:15;63:5;<br>67:24;68:17,24;<br>70:23;89:21;90:4;<br>92:3;96:17;103:21;<br>110:22;111:9;112:1;<br>115:8;116:23;127:4;<br>134:23;135:9<br><b>showed (2)</b><br>24:2;110:17<br><b>showing (4)</b> | 56:17;96:21;122:3;<br>132:3<br><b>shown (9)</b><br>22:12,13;53:6,13;<br>56:18;80:25;102:25;<br>121:12,13<br><b>shows (2)</b><br>91:3;117:19<br><b>show-up (1)</b><br>112:2<br><b>shutter (1)</b><br>76:25<br><b>sic (2)</b><br>17:4;71:2<br><b>sides (1)</b><br>38:4<br><b>signature (8)</b><br>28:24;29:2;31:12,<br>19;47:9;59:1;63:19;<br>127:24<br><b>significant (1)</b><br>95:13<br><b>significantly (1)</b><br>39:21<br><b>signing (1)</b><br>28:24<br><b>similar (2)</b><br>23:24;114:10<br><b>Sisson (16)</b><br>91:5;103:21;<br>105:12;106:1;<br>127:11,16,18;128:1,<br>25;129:4,25;130:14;<br>131:2;132:5,12,17<br><b>sister (13)</b><br>21:15,19;24:12;<br>25:6,23;35:4;100:23;<br>101:14,24;102:15;<br>103:9;116:19;132:13<br><b>sisters (7)</b><br>21:5;49:3,19;<br>100:20,25;101:1;<br>102:2<br><b>sister's (1)</b><br>103:10<br><b>sit (14)</b><br>20:20;44:10;59:13;<br>67:8,10;70:14;77:11;<br>94:5;123:19;125:12;<br>126:20;127:25;<br>128:6;132:2<br><b>Six (1)</b><br>14:7<br><b>sold (1)</b><br>18:5<br><b>solicited (1)</b><br>131:11<br><b>solo (5)</b><br>9:15,15,17;17:14;<br>18:9<br><b>Somebody (3)</b><br>23:6;70:2;79:12<br><b>sometime (4)</b> | 13:8;14:15;19:11;<br>25:24<br><b>sometimes (3)</b><br>38:8;44:7;45:9<br><b>Somewhere (6)</b><br>13:3;48:13;50:4;<br>66:22;73:12;113:12<br><b>Sonya (6)</b><br>71:2,10,25;91:16,<br>17,22<br><b>soon (1)</b><br>25:7<br><b>sorry (12)</b><br>13:10;15:1;34:3;<br>39:10;47:23;49:12;<br>50:20;57:7;63:3;<br>113:15;115:25;<br>118:25<br><b>sort (2)</b><br>10:24;134:6<br><b>sorts (2)</b><br>11:19;44:14<br><b>sound (1)</b><br>25:1<br><b>sounds (1)</b><br>15:20<br><b>source (1)</b><br>67:2<br><b>South (1)</b><br>71:20<br><b>Southern (1)</b><br>20:12<br><b>speak (1)</b><br>74:25<br><b>speaking (1)</b><br>72:23<br><b>specialist (2)</b><br>4:12;20:4<br><b>specialization (1)</b><br>19:25<br><b>specialty (1)</b><br>19:22<br><b>specific (10)</b><br>10:2;12:12;15:2,<br>11;19:1;30:8;40:5,8;<br>56:11;129:5<br><b>specifically (5)</b><br>29:20;58:13;60:25;<br>61:5;79:10<br><b>speculation (10)</b><br>30:20;36:17;43:20;<br>46:13;61:19;62:11;<br>65:25;79:5;88:24;<br>133:18<br><b>speech (1)</b><br>8:4<br><b>speedy (8)</b><br>35:5,16,22;36:13,<br>20;37:1,22;38:12<br><b>spoke (3)</b><br>25:22;40:16;73:1<br><b>spree (2)</b><br>95:18;96:2 | <b>stamp (4)</b><br>27:14;47:9;71:23;<br>115:18<br><b>stand (1)</b><br>75:8<br><b>standard (1)</b><br>26:16<br><b>standing (1)</b><br>98:9<br><b>start (6)</b><br>7:4;9:9;11:10;<br>12:11;25:21;97:17<br><b>started (3)</b><br>12:13,13;13:3<br><b>starting (9)</b><br>4:15;27:14;95:14;<br>100:17;105:6;<br>112:10,11;113:24;<br>114:1<br><b>starts (4)</b><br>27:15;92:13;96:18;<br>117:25<br><b>state (18)</b><br>20:10;27:9;32:15;<br>37:9,15;45:13;50:9,<br>17,25;52:3;66:8;<br>90:12;92:10;95:14;<br>96:5;106:1;107:13;<br>112:11<br><b>stated (8)</b><br>100:10;105:18;<br>108:15;109:11;<br>114:23;118:24;<br>130:3;133:13<br><b>statement (60)</b><br>34:19;45:6;73:14;<br>92:12;93:5,7,18,23;<br>95:19;96:9,10,11,15,<br>20,23,25;97:18;98:3,<br>11,12,18,21;100:11,<br>16;102:4,8,25;103:8,<br>13;104:2,9,25;105:6,<br>12;106:15,21,23;<br>108:4,4,9,12;109:12,<br>19;110:1,3,6;112:9;<br>113:6;114:1,19,20,<br>24;117:4,7,8,11;<br>119:22;130:15,20,25<br><b>statements (4)</b><br>39:13,20;41:1;<br>94:24<br><b>States (6)</b><br>4:4;20:11;50:8;<br>63:23;128:19;129:22<br><b>state's (6)</b><br>36:5,10;41:2;<br>42:22;48:7;96:7<br><b>stating (1)</b><br>32:15<br><b>station (5)</b><br>73:18;74:9;75:17;<br>79:13;80:15<br><b>statute (1)</b> |
|---|---|--|---|--|

|   |   |   |   |   |
|---|---|---|---|---|
| 50:18<br>stay (3)<br>13:1;14:6,16<br>stayed (3)<br>11:24;12:19;<br>106:19<br>steps (3)<br>60:20,21;87:6<br>still (6)<br>16:8,11;129:2;<br>133:9,14;134:5<br>stint (1)<br>13:17<br>stipulating (1)<br>37:14<br>stock (2)<br>97:25;98:14<br>stop (1)<br>89:20<br>stopped (1)<br>101:14<br>story (1)<br>45:16<br>strategy (5)<br>40:22;42:21;46:4,<br>6;56:9<br>Street (2)<br>69:4;71:20<br>strength (1)<br>36:4<br>Strickland (1)<br>26:15<br>Studies (2)<br>133:22,24<br>study (1)<br>8:2<br>subpoena (18)<br>7:9,11;41:2;69:1,<br>19;70:18;71:3,5,8;<br>72:4,16;73:20;74:3,7,<br>17,23;75:13;80:16<br>subpoenaed (3)<br>68:19;69:20;70:15<br>subpoenas (3)<br>68:14;70:10;91:15<br>subsection (3)<br>33:2,3;55:4<br>subsequently (1)<br>44:5<br>substantive (1)<br>76:15<br>successful (1)<br>54:18<br>suggested (1)<br>73:14<br>suggestive (1)<br>112:2<br>Suite (1)<br>4:9<br>Sunbird (1)<br>107:24<br>supplemental (1)<br>47:5 | support (5)<br>116:10;127:20;<br>128:1;130:1,16<br>supported (1)<br>128:10<br>supporting (1)<br>126:24<br>supportive (1)<br>129:9<br>suppress (2)<br>44:22;112:4<br>Supreme (1)<br>20:16<br>Sur (6)<br>103:10,17,22;<br>106:3,17;127:12<br>sure (17)<br>23:12;39:15;49:24;<br>56:14;59:8;75:3;<br>77:24;78:10;79:15,<br>18;80:6,13;81:18;<br>104:5,16;108:16;<br>109:20<br>suspect (1)<br>66:17<br>suspects (2)<br>66:9;110:24<br>suspended (1)<br>19:14<br>sustained (1)<br>33:18<br>swear (1)<br>5:1<br>sworn (2)<br>5:4;41:1 | Task (1)<br>15:3<br>tecum (1)<br>69:2<br>telling (3)<br>79:25;81:12;88:3<br>tends (2)<br>51:20;55:6<br>term (2)<br>31:4,9<br>terms (9)<br>36:8;37:2;48:9;<br>55:1;60:11;67:13;<br>104:24;105:11;109:8<br>terrifying (1)<br>95:17<br>test (2)<br>107:23,23<br>testified (13)<br>5:4;25:4;28:7;<br>73:25;80:20;81:3;<br>117:13;119:25;<br>120:8;124:14;<br>125:19;126:10;<br>130:19<br>testify (10)<br>59:15;74:1;77:7,9;<br>79:22;81:16;101:13;<br>103:22;108:18;<br>131:13<br>testifying (4)<br>79:25;80:22;91:14;<br>125:13<br>testimony (27)<br>7:10;22:15;37:15;<br>42:8;43:15;44:3;<br>45:18;56:7;63:1;<br>68:5,15;76:6;80:3;<br>81:24;103:20;107:6,<br>16;114:16;120:3;<br>124:1;126:5;128:13;<br>131:4,11;132:4;<br>133:24;134:1<br>theory (2)<br>52:15;57:13<br>thinking (2)<br>30:24;66:24<br>third (7)<br>36:5;71:4;90:20;<br>125:16,20;126:7,23<br>third-party (1)<br>41:3<br>Thiros (4)<br>13:6,18,20;14:1<br>Thomas (4)<br>71:10,25;91:17,22<br>Thomas's (1)<br>72:5<br>Thompkins (3)<br>121:25;122:5;<br>129:23<br>Thompson (17)<br>52:3,11,21;53:8; | 54:2;63:17,25;64:9,<br>15;65:7,23;66:18,20;<br>67:11,20;68:2;71:2<br>though (3)<br>42:11,16;91:13<br>three (4)<br>17:2;18:18;24:6;<br>129:20<br>three-page (1)<br>47:3<br>three-quarters (1)<br>93:1<br>Thursday (2)<br>106:4,16<br>till (1)<br>19:11<br>timely (1)<br>64:24<br>times (2)<br>29:22;45:4<br>Timmy (3)<br>96:25;97:3,8<br>today (26)<br>5:13;16:3,6;20:20;<br>22:3,9;23:2,14;<br>27:23;41:4,5;47:13;<br>59:14;67:8,10;70:14;<br>78:9;81:17;82:4;<br>123:20;125:12;<br>126:5,21;127:25;<br>128:6;132:3<br>Today's (1)<br>4:6<br>TOLBERT (154)<br>4:17,18;5:9,11;<br>19:18,24;26:8,12;<br>27:1,7;29:5,13;30:2,<br>15,21;31:17;32:11,<br>22;33:11;34:6;35:20;<br>36:12,24;38:2;39:1,<br>11;40:3;41:12,16;<br>43:21;46:11,15,22;<br>47:7,24;48:3,20;<br>49:13;51:16;52:14;<br>53:11,18;54:7;56:22;<br>57:6;58:19;59:21;<br>61:3,11,22;62:2,14;<br>63:2,9;64:20;65:12;<br>66:4;68:7,23;69:17,<br>24;70:22;72:13;79:7,<br>21;81:2,5,9,13,20;<br>82:11,15,21;83:1,9,<br>23;84:4,12,20;85:1,<br>19;86:7,22;87:8,16,<br>22;88:1,16;89:1,7,10,<br>15;90:8;92:7,19,21;<br>94:18;97:13;98:10;<br>99:2,23;100:15;<br>101:20;102:12,21;<br>103:19;104:11,18,21;<br>105:3;106:12;107:8;<br>110:13;111:16,18,22;<br>113:14;115:4,12,24; | 116:14;117:16;<br>119:1,5,12,20;120:7,<br>14;121:5,21;122:11;<br>123:7,13,15;124:2,5,<br>9,21;126:1,19;127:3,<br>8;128:4,14;130:10,<br>21;131:21;132:19;<br>133:1,20;134:11,22;<br>135:5,8<br>Tolbert's (1)<br>92:17<br>told (12)<br>23:21;74:12;75:6;<br>76:21;77:16,21;78:8,<br>8;79:11;80:10,11;<br>95:15<br>Tony (1)<br>4:21<br>took (6)<br>8:21;14:10;53:7;<br>87:6,6;130:5<br>tool (5)<br>39:23;40:1,4,6;<br>41:7<br>tools (1)<br>40:9<br>top (1)<br>90:21<br>tough (2)<br>94:6,15<br>toward (1)<br>107:18<br>towards (2)<br>27:13;90:17<br>town (2)<br>15:24;23:10<br>trade (2)<br>10:14,23<br>transcript (57)<br>22:14;44:4;90:11,<br>13;92:9;96:13;98:16,<br>20,23;99:10,18,21,<br>22;100:5,17;101:6;<br>102:8,23;103:13;<br>104:1,7,22,23;105:2,<br>5,18,22,25;106:9,14;<br>107:3,13;108:8,12,<br>13;109:12,18,25;<br>110:6;112:10;<br>113:25;114:23;<br>115:19;117:10,18,19;<br>119:7,14,17;122:10,<br>22;123:8,12;125:12;<br>127:10;129:10;<br>130:24<br>transcripts (6)<br>24:6;44:16,18,22;<br>132:11,16<br>transitioned (2)<br>12:17,20<br>transpired (1)<br>81:24<br>traveled (1) |
|   | T   |   |   |   |
|   | Tabor (1)<br>9:5<br>tactics (1)<br>42:21<br>talk (6)<br>61:23,25;62:3,5;<br>84:21;93:21<br>talked (8)<br>53:25;54:1;70:8;<br>72:19,22;74:8;76:4;<br>101:9<br>talking (14)<br>22:24;34:1;56:13,<br>14,18;62:15,22;<br>71:22,25;107:24;<br>111:5;121:24;<br>122:14,14<br>tamper (5)<br>82:9,18,24;83:7,13<br>tampered (3)<br>84:1,11;85:12<br>tampering (8)<br>78:3,22;82:14;<br>83:15;86:24;87:18;<br>88:11,20   |   |   |   |

|   |  |   |  |   |
|---|--|---|--|---|
| 107:15<br><b>trial (100)</b><br>7:9;19:21;20:14;<br>22:17,18,19;24:25;<br>25:25:24;26:2,18;<br>30:1;32:3,8;33:4;<br>34:7;35:5,16,22;<br>36:13,19,20;37:1,2,6,<br>7,18,22;38:9,12;39:6,<br>16,18,24;40:14;42:5,<br>9,14,17;43:15,18;<br>46:3,6,48;18:53;7,17,<br>23;54:4,17,19;56:9;<br>57:1,22;58:6;59:7,<br>16;60:22;61:1,2,6;<br>62:9,16;64:16,19,22,<br>25;68:14,15,19;<br>70:16;72:1,6;74:10,<br>17,18,19,20;76:23;<br>78:4;90:11,16,20;<br>91:2,2,9;92:9;<br>109:11;110:22;<br>116:6,17;117:4,13,<br>20;118:20;120:3;<br>121:10;125:14;<br>126:11;127:10;130:2 | 14:23<br><b>types (1)</b><br>19:1<br><b>typical (2)</b><br>50:19,21<br><b>typically (6)</b><br>24:16,19;37:1;<br>56:10;59:4;96:19  | 40:9  | <b>visited (1)</b><br>128:18<br><b>voir (1)</b><br>111:24  | 87:11,15;88:10<br><b>Williams (13)</b><br>62:16,18,21;<br>102:17;108:17;<br>109:21;114:13;<br>123:1,24;124:17;<br>130:5;131:16;132:7  |
|   | <b>U</b>   | <b>V</b>  | <b>W</b>   |   |
|   | <b>unavailability (1)</b><br>37:12<br><b>unavailable (1)</b><br>42:9<br><b>uncharged (1)</b><br>73:8<br><b>unclear (3)</b><br>98:6;104:6,14<br><b>under (12)</b><br>33:2;37:4,21;38:4;<br>41:1;50:7,8;73:20;<br>75:22;80:23;81:14;<br>115:17<br><b>undergraduate (2)</b><br>7:21,25<br><b>unduly (1)</b><br>112:2<br><b>union (4)</b><br>10:14,15,18,23<br><b>United (1)</b><br>4:3<br><b>university (4)</b><br>7:21;8:1,7,14<br><b>Unless (1)</b><br>50:24<br><b>unusual (3)</b><br>40:23;94:21;95:2<br><b>up (17)</b><br>15:8,23;17:3;23:8,<br>11,14;26:16;38:8,23;<br>42:7,19;49:23;54:11;<br>55:21;66:16;67:3;<br>80:2<br><b>upon (6)</b><br>43:7;50:13;86:12;<br>109:5;129:5;130:23<br><b>use (16)</b><br>39:23;40:9,13;<br>57:3,12;68:13,13;<br>70:8;98:6,8;103:15;<br>113:1;118:23;121:4;<br>131:18;132:10<br><b>used (4)</b><br>38:24;40:15;45:14;<br>57:1<br><b>usual (1)</b><br>25:20<br><b>usually (2)</b><br>24:17;25:16<br><b>utilize (1)</b><br>39:22<br><b>utilized (1)</b> | <b>vacuum (1)</b><br>56:15<br><b>vague (4)</b><br>21:3;30:20;37:24;<br>43:20<br><b>Valparaiso (2)</b><br>8:14;9:6<br><b>Valpo (2)</b><br>8:15,17<br><b>van (1)</b><br>107:23<br><b>Vanes (1)</b><br>79:19<br><b>varied (1)</b><br>61:20<br><b>varies (2)</b><br>39:20;40:23<br><b>variety (2)</b><br>13:22;36:10<br><b>various (2)</b><br>22:12;67:16<br><b>varying (1)</b><br>16:25<br><b>vehicle (1)</b><br>44:15<br><b>vehicles (2)</b><br>39:22;44:14<br><b>verbatim (2)</b><br>113:17;122:12<br><b>verdict (2)</b><br>33:19;34:20<br><b>versus (5)</b><br>4:3;5:14;26:15;<br>90:12;92:10<br><b>vice (1)</b><br>20:17<br><b>victim (2)</b><br>62:1;95:7<br><b>victims (3)</b><br>61:23;62:6;73:8<br><b>victim's (2)</b><br>94:16,25<br><b>video (2)</b><br>4:12;134:19<br><b>VIDEOGRAPHER (5)</b><br>4:1,25;89:8,13;<br>134:18<br><b>videographer's (1)</b><br>6:4<br><b>video-recorded (1)</b><br>4:8<br><b>view (2)</b><br>30:10;95:10<br><b>Village (2)</b><br>58:11;99:17<br><b>violation (1)</b><br>77:25<br><b>Virginia (1)</b><br>11:2 | <b>wait (2)</b><br>25:21;33:24<br><b>WALKER (2)</b><br>4:21,21<br><b>Washington (2)</b><br>10:15;26:15<br><b>waste (1)</b><br>6:2<br><b>way (11)</b><br>37:14;45:22;65:18;<br>75:14;90:1;93:1,15;<br>98:7;110:23;111:12;<br>128:15<br><b>weak (4)</b><br>44:8,24,25;45:15<br><b>weakness (1)</b><br>36:5<br><b>wear (1)</b><br>89:3<br><b>wearing (2)</b><br>112:15,23<br><b>wedded (1)</b><br>43:3<br><b>week (3)</b><br>23:7;106:18;<br>118:15<br><b>well-convinced (1)</b><br>21:7<br><b>well-trusted (1)</b><br>54:24<br><b>weren't (2)</b><br>66:16;67:4<br><b>Western (1)</b><br>20:17<br><b>What's (10)</b><br>7:17;46:18;58:15;<br>81:24;99:7;100:13;<br>113:13,20;115:6;<br>125:18<br><b>whatsoever (2)</b><br>112:24;113:1<br><b>whenever (2)</b><br>35:13;56:13<br><b>wherever (1)</b><br>11:4<br><b>whichever (2)</b><br>49:1;126:17<br><b>white (1)</b><br>67:12<br><b>whole (2)</b><br>22:13;45:22<br><b>who's (1)</b><br>23:2<br><b>whose (3)</b><br>10:21;71:15;85:11<br><b>widespread (3)</b> | <b>Williams' (2)</b><br>110:8;114:3<br><b>Willie (15)</b><br>4:2,24;5:13,17;<br>20:21;29:3;31:13,16;<br>90:11;92:9;97:23;<br>98:12;100:19;109:6;<br>120:4<br><b>win (1)</b><br>30:25<br><b>wintertime (1)</b><br>129:2<br><b>wit (2)</b><br>83:25;95:7<br><b>within (7)</b><br>31:9;36:22;37:7;<br>38:19;39:3;50:18;<br>64:8<br><b>without (2)</b><br>30:17;41:22<br><b>witness (48)</b><br>5:1,3,6;37:11;<br>39:19;41:2,3;42:2,13,<br>20,23,25;44:8,11,19,<br>24,25;45:2,11,13,13,<br>15;60:7;68:15;78:3,<br>22;82:9,14,17,24;<br>83:7,11,15;84:1,11;<br>85:12;86:24;87:17;<br>88:19;89:4;92:24;<br>119:11;123:12;<br>127:19,19;130:19;<br>134:14;135:3<br><b>witnesses (28)</b><br>36:10;39:13,14;<br>40:17;58:1,4,13,23;<br>59:6,14,15;60:7,8,19;<br>62:20;67:16;88:11,<br>21;90:15,19,22;91:2,<br>9;111:3;116:9;<br>127:23;131:12;133:3<br><b>woman (3)</b><br>103:24;106:6;<br>118:4<br><b>word (1)</b><br>40:9<br><b>words (1)</b><br>104:8<br><b>work (10)</b><br>9:23;10:6,9,23;<br>11:17;16:17;36:21;<br>45:21;90:1;99:16<br><b>worked (5)</b><br>9:2,11;100:8;<br>101:12,18<br><b>working (1)</b> |



|  |  |   |  |  |
|--|--|---|--|--|
| 25:6<br><b>worried (2)</b><br>43:11,12<br><b>writ (1)</b><br>31:4<br><b>writing (1)</b><br>107:25<br><b>written (1)</b><br>122:1<br><b>wrong (1)</b><br>134:1<br><b>wrongful (1)</b><br>134:10<br><b>Wyatt (2)</b><br>17:18;18:3   | <b>17th (1)</b><br>4:6<br><b>18 (2)</b><br>108:13,14<br><b>19 (1)</b><br>100:17<br><b>1976 (3)</b><br>8:17,24;19:10<br><b>1978 (1)</b><br>15:22<br><b>1980 (3)</b><br>16:2,13,14<br><b>1981 (2)</b><br>13:9;100:8<br><b>1982 (2)</b><br>13:17;14:4<br><b>1984 (1)</b><br>15:10<br><b>1988 (2)</b><br>97:25;98:2<br><b>1992 (45)</b><br>5:18;6:8,10;18:8,9,<br>20;19:5;20:22;25:1,<br>25;32:4;39:24;40:14;<br>47:10;48:18;51:4;<br>52:7,17,20;53:6;<br>55:12;58:7,22;59:16;<br>60:5,9,14;63:13;<br>65:8;67:22;95:18;<br>98:13;101:15;<br>111:12;118:12;<br>119:9;120:4,11;<br>121:9;124:15;<br>125:17,22;126:14,24;<br>129:3<br><b>1996 (3)</b><br>8:24;86:14;88:8<br><b>1998 (1)</b><br>97:24<br><b>1st (4)</b><br>17:5;58:21;60:9;<br>86:14 | <b>2019 (1)</b><br>4:6<br><b>21 (2)</b><br>93:3;106:15<br><b>2293 (1)</b><br>69:4<br><b>23 (1)</b><br>93:3<br><b>24th (1)</b><br>63:13<br><b>25 (3)</b><br>105:7,25;108:14<br><b>27th (13)</b><br>47:10;51:4;60:5;<br>95:18;98:13;101:15;<br>119:9;120:11;121:9;<br>124:15;125:17,22;<br>126:24<br><b>28 (1)</b><br>125:1<br><b>283 (2)</b><br>27:18,20<br><b>2nd (1)</b><br>109:2  | <b>59 (1)</b><br>101:6<br><b>6</b><br><b>6 (5)</b><br>28:21;33:2;70:20,<br>24,25<br><b>60 (5)</b><br>103:12,25;105:4,7,<br>24<br><b>61 (4)</b><br>104:1;105:8;106:8,<br>14<br><b>62 (1)</b><br>107:11<br><b>6300 (2)</b><br>103:11,18<br><b>64 (1)</b><br>108:11<br><b>65 (3)</b><br>108:15,23;109:14<br><b>67 (1)</b><br>112:8<br><b>68 (1)</b><br>113:24   | 129:11<br><b>803 (1)</b><br>131:1<br><b>809 (1)</b><br>115:17<br><b>80s (1)</b><br>15:13<br><b>81 (2)</b><br>13:3,5<br><b>810 (2)</b><br>117:17,23<br><b>811 (1)</b><br>119:25<br><b>816 (1)</b><br>120:19<br><b>82 (1)</b><br>13:12<br><b>823 (3)</b><br>121:22;125:2,7<br><b>828 (3)</b><br>125:1,11;126:2<br><b>83 (2)</b><br>13:15;14:15<br><b>86 (1)</b><br>17:20 |
| <b>Y</b>   |  |   |  | <b>9</b>   |
| <b>year (8)</b><br>9:25;10:1;13:13;<br>14:17;15:7,9;118:11,<br>11<br><b>years (6)</b><br>6:15;7:15;8:6,15;<br>16:1;17:24<br><b>yesterday (1)</b><br>95:15<br><b>young (3)</b><br>109:4;118:3,3   |  |   |  | <b>9 (12)</b><br>92:4,5,8;93:1,20;<br>100:14;105:5;<br>109:14;110:11;<br>113:21;115:7;126:2<br><b>9:00 (2)</b><br>106:19;107:18<br><b>90 (1)</b><br>24:17<br><b>90s (2)</b><br>17:24,25<br><b>9211 (1)</b><br>7:12<br><b>96 (2)</b><br>18:2;19:11  |
| <b>0</b>   |  |   |  |  |
| <b>000110 (1)</b><br>71:23   |  |   |  |  |
| <b>1</b>   |  |   |  |  |
| <b>1 (8)</b><br>27:5,9,11;28:12;<br>63:17,22;105:8;<br>106:8<br><b>1:21 (1)</b><br>4:7<br><b>10 (8)</b><br>28:14;115:9,10,13;<br>116:16;117:19,24;<br>120:19<br><b>1085 (1)</b><br>4:9<br><b>11 (9)</b><br>117:25;118:16;<br>127:5,6,13,16;128:7,<br>21;131:20<br><b>11:00 (1)</b><br>23:16<br><b>12 (2)</b><br>121:23;126:3<br><b>1340 (1)</b><br>115:17<br><b>14 (1)</b><br>112:11<br><b>16 (1)</b><br>95:14 | <b>2</b><br><b>2 (14)</b><br>27:19;46:19,20,23,<br>24;51:2,17,18;55:3,3;<br>57:25;60:5;105:8;<br>106:9<br><b>2:17-CV-32 (1)</b><br>4:6<br><b>2:56 (1)</b><br>89:9<br><b>20 (5)</b><br>22:11;23:17;105:7,<br>24,25<br><b>2004 (1)</b><br>28:14<br><b>2006 (1)</b><br>19:11<br><b>2018 (1)</b><br>17:5   | <b>3</b><br><b>3 (5)</b><br>58:16,17,20;60:6;<br>93:25<br><b>3:04 (1)</b><br>89:14<br><b>3rd (1)</b><br>109:2<br><b>4</b><br><b>4 (7)</b><br>37:4,4;63:6,7,10;<br>96:18;131:4<br><b>4:00 (3)</b><br>89:5,20;134:12<br><b>4:01 (1)</b><br>134:19<br><b>4:02 (1)</b><br>135:12<br><b>4:30 (1)</b><br>99:16<br><b>46410 (1)</b><br>7:13<br><b>5</b><br><b>5 (3)</b><br>68:21,25;69:1<br><b>5:30 (2)</b><br>97:23;98:13<br><b>555 (1)</b><br>92:14<br><b>56 (2)</b><br>93:24,25<br><b>58 (2)</b><br>96:18;97:17 | <b>7</b><br><b>7 (7)</b><br>72:11,15,15;97:18,<br>22;113:25;114:2<br><b>70 (5)</b><br>8:8;37:7,18;38:12,<br>19<br><b>702 (1)</b><br>27:15<br><b>71 (1)</b><br>92:14<br><b>73 (3)</b><br>8:8,10,16<br><b>76 (1)</b><br>8:16<br><b>78 (2)</b><br>12:8;128:15<br><b>787 (1)</b><br>128:20<br><b>788 (3)</b><br>128:16,21,23<br><b>79 (1)</b><br>13:3<br><b>7th (1)</b><br>20:15<br><b>8</b><br><b>8 (10)</b><br>90:5,6,10,18;92:1,<br>2;94:1;107:11;<br>112:11;129:20<br><b>8:30 (1)</b><br>120:1<br><b>801 (1)</b> |  |

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 34

## Plaintiff's Summary Judgment Response





1 Q And you know Kimerly Belinsky and you knew  
2 Bernard Jiminez?

3 A Yes.

4 Q And you knew what house they lived in on  
5 that block, correct?

6 A Yes.

7 Q And, in fact, a couple houses across the  
8 street down from yours, correct?

9 A Yes.

10 Q And directing your attention to the  
11 evening hours, February 27th, 1992,  
12 approximately 9:00 o'clock, what were you  
13 doing at that time?

14 A Well, I was coming outside, putting my  
15 clothes in my cousin's car 'cause I  
16 was going to go over to my girlfriend's  
17 house, and --

18 Q Where was that car parked at?

19 A It was parked on the street in front  
20 of the house.

21 Q Okay. And what, if anything, did you see  
22 or hear when you were coming out to put  
23 the clothes in the car?

24 A Okay, I heard a lot of arguing and  
25 cussing.

220

MAY 23 1997

*Anne M. Antox*  
751 CLERK LAKE SUPERIOR COURT

VANES 000766

1 Q Where was that coming from?

2 A It was coming from Kim' house.

3 Q And what, specifically, did you hear if  
4 you can recall?

5 A "Give me your money. Give me your  
6 damn money."

7 Q Now, you were putting some clothes in your  
8 car, right?

9 A Yes.

10 Q Okay. What happened? Did there come a  
11 point you went back in your house?

12 A Oh, yeah, I ran in the house and I  
13 told my cousin, I said, I said, "Call  
14 the police. Kim and them getting  
15 robbed. Kim and them getting robbed."  
16 And then so she didn't call the police  
17 right at the time, she called Loraine,  
18 which is Kim' best friend stay across  
19 the street, and Loraine said, "They  
20 probably be just arguing or  
21 something."

22 Q I want to back up a little bit. Okay,  
23 now, you testified you were coming out to  
24 put some clothes in your car?

25 A Yes.



1 Q Okay. And you went back into your house,  
2 correct?

3 A Yeah, I went in the house.

4 Q The first time you came out to your car,  
5 what did you see at the Belinsky  
6 residence?

7 A I seen people standing out towards the  
8 porch.

9 Q Okay.

10 A And I seen grocery bags.

11 Q And then you went back into your house,  
12 right?

13 A Right, right.

14 Q Had you heard anyone threaten anyone at  
15 that point, the first time you were  
16 outside?

17 A Yes; yes.

18 Q You went back in your house and you came  
19 out again, correct?

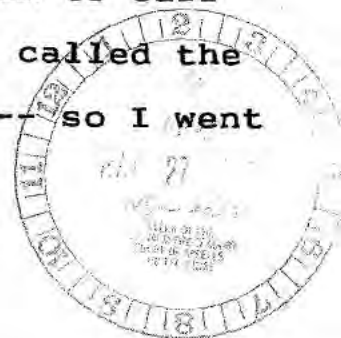
20 A Uh-huh.

21 Q What did you see when you came out the  
22 second time at the Belinsky residence?

23 A Well, after I told him them to call  
24 the police -- they hadn't called the  
25 police right at the time -- so I went

222

753



back out, and I said, "Get off the telephone and call the police," so by the time I came back out the second time, I went around the house and I was standing on the side of the house. And it was like five minutes, I heard like a shot and it was like a small caliber gun, a small gun. I heard the shots, and I run back in the house, so I was in, you know.

Q Okay, so you heard this arguing going on for about five minutes?

A Yeah, about five.

Q Now, let's back up a second. You saw Kimerly and the children and Bernard Jiminez on the porch?

A Right.

Q And where was the robber at?

A He was facing towards him.

Q Okay, I would like you to turn around and take a look at these pictures. And as you look at State's Exhibit 2 and State's 3, I ask you if you recognize that porch area?

A Yeah.

Q And is that where you saw this incident

1 occur on February 27th?

2 A Yes.

3 Q How close was the robber to the porch in

4 terms of distance between me and you?

5 Closer, farther?

6 A About five feet.

7 Q About five feet?

8 A Yeah.

9 Q About this far, would that be fair to say?

10 A Uh-huh.

11 Q And you were able to see Mr. Jiminez and

12 Ms. Belinsky, correct?

13 A Who is that?

14 Q You could see Bernard Jiminez and Kimerly

15 Belinsky, correct?

16 A Oh, yeah, okay.

17 Q Okay, you know them by their first names,

18 correct?

19 A Yeah.

20 Q Okay, I apologize. Were their backs to

21 the robber or were their faces to the

22 robber?

23 A Their faces.

24 Q Their faces?

25 A Yeah.



1 Q Your testimony is that they were about  
2 five feet away?

3 A Uh-huh.

4 Q And you heard this arguing going on for  
5 five minutes?

6 A Yeah, yes.

7 Q Could you tell whether or not the robber  
8 had a gun?

9 A Yeah.

10 Q What did you hear him say?

11 A "Give me your damn money. I'm going  
12 to kill you. I'm going to kill you."

13 Q Could you see where he was pointing the  
14 gun?

15 A No.

16 Q Now, you saw people on the porch and you  
17 saw the robber right next to them,  
18 correct?

19 BY MR. KING:

20 Judge, at this point, I'll  
21 object to the recitation of  
22 the answers in the form of  
23 questions. Further, it's  
24 leading.  
25

1 BY THE COURT:

2 Well, if he's reiterating prior  
3 answers, I think it's permissible. Go  
4 ahead.

5 BY MR. BENSON:

6 Q After this arguing on the porch, what did  
7 you see?

8 A After it happened?

9 Q After the arguing happened.

10 A I didn't see nothin'. Well, I was  
11 standing on the side of the house; I  
12 just heard the shots.

13 Q Okay, let's back up a little bit. You  
14 heard arguing on the porch, correct?

15 A Uh-huh.

16 Q Okay, what, if anything, did anyone on the  
17 porch do to the robber?

18 A Huh?

19 Q What, if anything, did anyone on the porch  
20 do to the robber?

21 A It looked like Bernie, he charged --  
22 he charged him.

23 Q He charged him?

24 A Yeah, charged him.

25 Q And what did you observe then?

1 A Shots.

2 Q What happened between the robber and  
3 Bernard Jiminez that you saw? Did they  
4 shake hands, or what happened between  
5 them?

6 A No, swung, he like -- I guess he  
7 jumped off the porch and like swung or  
8 tried to swing on him or whatever.

9 Q So there was a struggle, is that what  
10 you're saying?

11 A Yeah.

12 Q How long did this last for?

13 A I don't know 'cause I went in the  
14 house after that 'cause I heard the  
15 shots.

16 Q Approximately how many shots did you see?

17 A I didn't see any.

18 Q I'm sorry, heard, not saw.

19 A About three.

20 Q Three?

21 A Yeah.

22 Q Approximately how long did the struggle  
23 last?

24 A I couldn't say; like I say, I went in  
25 the house.



1 Q Were you able to identify anything the  
2 robber might have been wearing?

3 A No -- black clothing, dark clothes.

4 Q And were you able to draw any conclusion  
5 as to the age of this person?

6 A It sound like, you know, he was like  
7 young, like in his early twenties,  
8 black street voice, you know.

9 Q And your house is a couple houses down,  
10 correct?

11 A Uh-huh.

12 Q Is that north or south?

13 A Across the street?

14 Q Yes. As you're looking at the Jiminez  
15 residence from your house, is the Jiminez  
16 residence to the left or the right?

17 A To the right.

18 BY MR. BENSON:

19 Thank you very much. I have nothing  
20 further.

21 CROSS-EXAMINATION

22 BY

23 MR. KING

24 Q Rodney, what did you do, look over the  
25 fence to see this?

1 A No, I could see -- okay, I was on the  
2 porch, right.

3 Q You were on your porch?

4 A Yeah, and her house, the porch steps  
5 is higher, so I could see over the  
6 fence.

7 Q So you were seeing over the fence from the  
8 porch?

9 A Yes.

10 Q This five minutes business, you're just  
11 giving an estimate here, am I correct?

12 A Yes, yes, about.

13 Q And it's nothing you timed? You weren't  
14 looking at a watch or a clock, am I  
15 correct?

16 A Excuse me?

17 Q You weren't looking at a watch or a clock,  
18 right? Am I correct?

19 A No.

20 Q All right. So this fellow that you saw  
21 robbing these folks was wearing black  
22 clothing, and you're figuring from the  
23 voice young, early twenties, a black  
24 street voice, is that right?

25 A Yes.

1 Q It would fit a lot of folks, that  
2 description, wouldn't it?

3 A Yes.

4 BY MR. KING:

5 That's all I have. Thank you.

6 BY MR. BENSON:

7 No redirect, Your Honor.

8 BY THE COURT:

9 Okay, that's all, sir. Thank you.

10 BY THE WITNESS:

11 Okay.

12 BY MR. BENSON:

13 May we approach, Judge?

14

15 WHEREUPON THE FOLLOWING DISCUSSION WAS  
16 HELD AT THE BENCH OUTSIDE OF THE HEARING  
17 OF THE JURY:

18

19 BY MR. BENSON:

20 Your Honor, we have Rhonda Williams  
21 here to testify. Her testimony is I  
22 assume going to be very lengthy.

23 BY THE COURT:

24 We are running a little behind  
25 schedule. So shall we push on?



1 BY MR. BENSON:

2 All right.

3  
4 WHEREUPON THE FOLLOWING PROCEEDINGS  
5 WERE ONCE AGAIN HELD IN THE HEARING OF THE  
6 JURY:

7  
8 BY MS. LAKE:

9 The State would call Rhonda Williams.

10 RHONDA WILLIAMS,  
11 having been first duly sworn upon her oath,  
12 testifies as follows:

13 DIRECT EXAMINATION

14 BY

15 MS. LAKE

16 Q Would you please state and spell your name for  
17 the court reporter?

18 A Okay, my name is Rhonda Williams,

19 R-h-o-n-d-a W-i-l-l-i-a-m-s.

20 Q Ms. Williams, where do you currently live?

21 A Indianapolis.

22 Q Where did you reside in February of this year?

23 A 4409 Connecticut.

24 Q And where is that?

25 A Gary.

1 Q And how long did you live at 4409 Connecticut  
2 Street?

3 A Three weeks.

4 Q And how old are you, ma'am?

5 A Thirty-one.

6 Q Are you married or are you single?

7 A I'm separated.

8 Q Do you have any children?

9 A Yes.

10 Q How many children do you have?

11 A Two.

12 Q How old are your children?

13 A Six and ten.

14 Q Are you employed?

15 A Yes.

16 Q Where are you employed?

17 A White Castle.

18 Q And what do you do at White Castle?

19 A I'm assistant supervisor.

20 Q In Indianapolis?

21 A Yes.

22 Q Ms. Williams, I'd like to direct your  
23 attention to February 27th, 1992. Do you  
24 recall the events that occurred that evening?

25 A Yes.

1 Q Did anything unusual happen?

2 A Yes.

3 Q What happened?

4 A I was robbed.

5 Q Do you see the person in the courtroom that  
6 robbed you?

7 A Yes.

8 Q Would you please identify him by where he's  
9 seated and what he's wearing?

10 A He has on a gray shirt and sitting at the  
11 table.

12 BY MS. LAKE:

13 Your Honor, the State would ask that the  
14 record would reflect the witness's  
15 identification of the defendant.

16 BY THE COURT:

17 The record will so indicate.

18 BY MS. LAKE:

19 Q Now, where did this robbery take place, Mrs.  
20 Williams?

21 A At my home.

22 Q And is that in Gary, Lake County, Indiana?

23 A Yes.

24 Q And approximately what time did this occur?

25 A Oh, about a quarter to 9:00

Filed in Clerk's Office

MAY 23 1997

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT



1 Q And how is it that you remember that it was a  
2 quarter to 9:00?

3 A I heard a noise and I looked at the clock.

4 Q What were you doing at that time?

5 A I was sleeping.

6 Q Had you just gotten off work, or why were you  
7 sleeping so early?

8 A I was working midnights, and I was --

9 Q And what type of noise is it that you heard?

10 A Like a rumbling at my bedroom window.

11 Q And what did you proceed to do after you heard  
12 the noise?

13 A I got up, I looked at the clock, and I  
14 started turning on lights in the house.

15 Q And then what did you do?

16 A I looked out one of the windows to see if  
17 I saw anything, and I went back to bed; I  
18 laid back down.

19 Q And then what happened?

20 A Then I heard a knock at the door.

21 Q What did you do after you heard the knock at  
22 the door?

23 A I got up and went to the door and asked  
24 who was it.

25 Q And was there a response at the door?

1 A Yes, the guy said, "It's your neighbor."

2 Q Okay, did you recognize the voice of this  
3 person?

4 A No, I didn't pay any attention.

5 Q Did you recognize if it was a male or female  
6 voice?

7 A It was a male voice.

8 Q And what did you proceed to do?

9 A I opened the door.

10 Q And what happened when you opened the door?

11 A There was a guy standing there with a gun  
12 in my face.

13 Q And what did the defendant do?

14 A I started screaming and kind of tussling a  
15 little bit. I was kind of shocked that  
16 when I opened the door what I saw. And he  
17 kind of forced his way in the house, and  
18 when he got in the house, he closed the  
19 door, and he told me to turn around; and  
20 he asked me if I had any money.

21 Q And what did you respond?

22 A I said, "I have a little bit," and he  
23 asked me where, where was it, and I told  
24 him, "In my bedroom," and he told me,  
25 "Come on, let's go." And we started

1 walking through the house to my bedroom.

2 And at the walkway before we get to the  
3 bedroom, he says that he knows that I'm at  
4 home by myself.

5 Q Did he say how he knew that?

6 A No.

7 Q Go ahead.

8 A And then we proceed to go on to my bedroom  
9 and he asked me where the money was. And  
10 it was on my dresser, and I handed it to  
11 him.

12 Q How much money was on your dresser if you  
13 know?

14 A It was fifty dollars.

15 Q All right, then what happened?

16 A Then he told me to lay down on the floor.

17 Q Was there any reaction by the defendant when  
18 you gave him the fifty dollars?

19 A He just asked me how much it was.

20 Q Did you hand it to him?

21 A Yes.

22 Q Okay. Then you got on the floor. What  
23 happened next?

24 A Then he start rumbling through my purse  
25 and in my drawers.



1 Q How do you know he was rumbling through your  
2 purse?

3 A Because when he was taking stuff out, and  
4 he was asking, "What's this? What's  
5 this?" stuff like that.

6 Q How were you lying on the ground?

7 A Face down with my face like, you know,  
8 towards him a little bit.

9 Q So were you able to watch him as he was  
10 throwing stuff out of your purse?

11 A Well, I could see little stuff in the  
12 corner of my eye.

13 Q And what happened next?

14 A And he opened -- I have a little -- I have  
15 a dresser where you can open the cabinet,  
16 and he took a purse out, and he asked me  
17 what was in that, and I said, "Nothin',  
18 you know, just an old purse," and then  
19 after he did that, he pulled the mattress  
20 like looking maybe up between the mattress  
21 to see if I had anything. And then he  
22 walked over to me and put a pillow over to  
23 my head and he said he was going to count  
24 to five and --

25 Q What were you thinking at that point when he

1 put the pillow over your head?

2 A I was going to die.

3 Q All right, what happened?

4 A And he put the pillow over and he put the  
5 gun in the -- I could feel the pressure of  
6 the gun. And he said if I didn't come up  
7 with any more money or tell him where any  
8 more money was that he would blow my head  
9 off.

10 Q Where did you feel the gun?

11 A In my head.

12 Q On the back of your skull?

13 A Right, right there (indicating).

14 Q And what was your response when you were  
15 threatened again?

16 A I just told him he could take my t.v.s or  
17 whatever 'cause I don't have any more  
18 money.

19 Q What happened next?

20 A Then he counted to four and he took the  
21 pillow off my head and told me to get up,  
22 and he asked me did I have any guns in the  
23 house or anything, and I said, "No." And  
24 as we were walking out of the room, he  
25 asked me did I have a telephone, and I

1 say, "Yes;" he asked me where was it, I  
 2 told him, "In the kitchen." He said, "Come  
 3 on, let's go." On our way to the kitchen,  
 4 he looked in my kids' bedroom, and then we  
 5 walked farther to the dining room and he  
 6 start taking stuff out of my coat 'cause I  
 7 had a coat laying on a chair in the dining  
 8 room. And then after he looked through  
 9 that, he had said that he really hate  
 10 robbing black people, but if I knew his  
 11 situation, I would understand. And then  
 12 we walked to the kitchen, and after we get  
 13 to the kitchen, I realize the phone isn't  
 14 there, 'cause I have a cordless, and I  
 15 said, "Well, it must be in the bedroom,"  
 16 you know, "We can go back and get it if  
 17 you want." And he said, you know, "That's  
 18 okay." Then after that, he told me to go  
 19 lay down on the floor in the living room  
 20 in the corner. And I laid there, and  
 21 after I laid there for a little while, he  
 22 left, and then he left the door kind of  
 23 cracked, so I crawled to the door to get  
 24 ready to close it and he came back then.  
 25 Q How far was the door --



1 A It was like cracked, just cracked.

2 Q And how did you say you got to the door? You  
3 crawled to the door?

4 A Yeah, I crawled to the door to get ready  
5 to shut it, and just when I got ready to  
6 shut it, he came back in.

7 Q And what happened?

8 A When he came back in, he had the gun, and  
9 he said, "I told you," you know, "to lay  
10 there," and -- 'cause I just was going to  
11 close the door, you know, I was just was  
12 going to close and lock the door, that's  
13 all I was doing. He just told me to, "Go  
14 back and lay down," and then all of a  
15 sudden he told me to, "Get up and come  
16 here," and I went to him, and he had me to  
17 stand outside. And when I was standing  
18 outside, it was like the neighbor next  
19 door, and they were looking, you know, and  
20 then he told me to come back in. He asked  
21 me did I know my neighbors, and I said,  
22 "No."

23 Q Now, which neighbors were you referring to?  
24 Are they across the street or are they next  
25 door?

1 A They were next door, right next door.

2 Q And they were looking at you?

3 A Yes, they were looking out the window.

4 Q And did you do anything when you were standing  
5 outside?

6 A No, I was too scared to move.

7 Q Okay, what happened next?

8 A Then he told me to come back in -- and he  
9 was still kind of looking out the door as  
10 he made me, you know, come back in. Then  
11 he made me go back out, and as I'm  
12 standing out there, he says, "I need a  
13 car," and I didn't say anything. Then he  
14 said, "But I don't want your car." And I  
15 still didn't say anything. Then he asked  
16 me did I have a screwdriver, and I say  
17 yes, so he asked me where was it; I told  
18 him, "In the kitchen." So we went back to  
19 the kitchen where the screwdriver was, and  
20 he asked me where was it; I told him, "In  
21 the drawer," and he told me, "Go get it."  
22 I got it out the drawer and I handed it to  
23 him; and when I handed it to him, he threw  
24 it back -- he threw it in the kitchen.  
25 And I said, "What's wrong?" and I had

1 realized myself it was he probably  
 2 couldn't use it 'cause it was a BY MR.  
 3 BENSON: lips screwdriver. And at this  
 4 time, it seemed like he was kind of  
 5 frustrated and told me to go back to my  
 6 spot, which I went back in the living room  
 7 and laid down. And he asked me did I have  
 8 anything cold to drink or anything like  
 9 that, I said, "No," and then I could hear  
 10 some noise in the kitchen like he was -- I  
 11 thought maybe he was getting a glass or  
 12 something. And he came out of the kitchen  
 13 and he stood in the middle of the living  
 14 room and he said he was going to leave but  
 15 I wouldn't know because he was watching  
 16 me. And I just -- he left and I just laid  
 17 there.

18 Q Now, Mrs. Williams, you described when he  
 19 first came to your door, you began to tussle,  
 20 is that correct?

21 A Yes.

22 Q Can you stand up and show the jury what you  
 23 mean by that? First of all, how tall are you,  
 24 ma'am?

25 A Four eleven and a half.



1 Q Okay, and can you describe to the jury how it  
2 is that you were tussling with him?

3 A I just -- well, when he came in, I took  
4 his hand like this (indicating) and moved  
5 it out of my face, moved his hand out of  
6 my face.

7 Q And did he respond when you did that, when you  
8 moved the gun?

9 A Yeah, he -- he just -- something just told  
10 me to let him go and I just stopped; that  
11 was it.

12 Q And then did you back into your house or did  
13 you turn --

14 A Yeah, I backed in.

15 Q Okay, so you were looking directly at his  
16 face?

17 A Not really. At that point when I was  
18 tussling with him, when I opened the door,  
19 I could see him, you know.

20 Q When you first opened the door --

21 A There he was.

22 Q How much taller is he than you? Can you  
23 estimate?

24 A I came up to about here, up to here to him  
25 (indicating).

1 Q So up to his chest you're saying?  
2 A Yes.  
3 Q Now, can you describe the gun?  
4 A It was black; it was all black.  
5 Q And what was the defendant's demeanor after he  
6 got in your house?  
7 A He wanted money.  
8 Q How was his tone of voice?  
9 A He was --  
10 Q Was he calm, was he irritated? I mean can you  
11 describe how he acted?  
12 A He was more calm; he was kind of calm.  
13 Q Was there any point in time that he was not  
14 calm and that his tone changed?  
15 A When he put the pillow over my head, and  
16 when he threw the screwdriver back.  
17 Q He became, what, irritated?  
18 A Yeah, he was kind of getting irritated.  
19 Q Now, when he put the pillow over your head and  
20 you said you felt the gun in your skull, was  
21 he standing over you or was he --  
22 A He was kneeled down.  
23 Q He was kneeled on top of you or kneeled on the  
24 floor?  
25 Q He was kneeled on the floor.

1 Q And with the gun to your head?

2 A (Indicating.)

3 Q You said he also was irritated when he threw  
4 the screwdriver at you?

5 A Well, he like threw it over me like, and  
6 he sounded like he was getting kind of  
7 tired of, you know, dealing with the  
8 situation, you know.

9 Q What was going on through your mind when he  
10 was in the house?

11 A I didn't upset him. At that time, when he  
12 threw the screwdriver, I saw that upset  
13 him.

14 Q What was going on through your mind?

15 A I was scared, felt like I was going to die  
16 if I didn't do the right thing.

17 Q Now, can you estimate how long it is that the  
18 defendant was inside your house that evening?

19 A Well, when he left the last time and I was  
20 laying down on the floor, it was 9:30; but  
21 while he was there, the alarm clock, you  
22 know, had went off, and it was set for  
23 9:00 o'clock for me to get up to go to  
24 work.

25 Q The alarm clock went off during the time that



1 he was in there?

2 A Right, and he had been there a while  
3 before the alarm clock had went off.

4 Q What time do you think he first arrived at  
5 your house? Was it right after you heard the  
6 noise at the window?

7 A Yes.

8 Q And you testified that was 8:45?

9 A Yeah, about.

10 Q Okay, did you shut the alarm off after you  
11 heard it?

12 A No, he wouldn't let me go no where to turn  
13 the alarm off. It went off when he was  
14 there?

15 Q And did it just stay on?

16 A Yeah, it just stayed on.

17 Q And how long after the alarm was on did he  
18 leave?

19 A Well, it was on for a long time, because  
20 when I laid down, I had -- the last time  
21 he left when I laid down, I was trying --  
22 I looked at my watch to give myself enough  
23 time to just try to make sure he was gone,  
24 and it was 9:30.

25 Q Is that when he came back or when he left?

1 A No, that was the last time.

2 Q Okay. So you looked at your watch and it was  
3 9:30 and he had gone for the last time?

4 A Uh-huh.

5 Q What were the lighting conditions in your  
6 house? How many lights did you have on?

7 A I had two living room lights on, I had a  
8 light in the hallway of the kitchen,  
9 between the -- like the kitchen and then  
10 it's a little hallway; there was a light  
11 on there. And there was a light on in my  
12 bedroom.

13 Q And what about the porch? Did you have a  
14 porch light on?

15 A Yes.

16 Q Now, you described when you had gone outside  
17 twice when the neighbors were out there. What  
18 was the defendant doing when you were standing  
19 outside on the porch?

20 A Standing in back of me with a gun in my  
21 back.

22 Q And then you backed back into the house, is  
23 that correct?

24 A (Indicating.)

25 Q All right, what occurred then after the

1 defendant finally left your house? What did  
2 you do?

3 A I had went to go look for the telephone so  
4 I can call the police.

5 Q And did you call the police?

6 A Yes.

7 Q And what happened then?

8 A They told me -- asked me my address and  
9 where was I and what happened and they  
10 would send somebody right out.

11 Q Did there come a time when you went down to  
12 the police station?

13 A I did go down to the police station.

14 Q And you gave the police a statement?

15 A Yes.

16 Q And you gave them a description of the  
17 defendant?

18 A Yes.

19 Q And what else did you do when you were down at  
20 the police station?

21 A I gave them a statement, I looked at some  
22 photos, and I looked at a line-up.

23 Q And can you say how many photographs that you  
24 looked at?

25 A It was in the hundreds.



1 Q I'm sorry?

2 A It was in the hundreds.

3 Q Would you say one hundred or four hundred, the  
4 high hundreds or the low hundreds?

5 A Well, the book was pretty thick, and I  
6 looked at about six or seven books.

7 Q Okay, you looked at about six or seven books.  
8 For the jury, describe to the jury how thick  
9 are those books? Can you estimate?

10 A Maybe about like this (indicating).

11 Q And how many photos are on each page?

12 A It was like three photos going across  
13 three times, so I guess it's nine photos  
14 on a page.

15 Q And do you remember your reaction when --  
16 well, first of all, were you able to identify  
17 any of the photographs that you looked  
18 through?

19 A Not until I got to the one.

20 Q Okay, to which one?

21 A To the defendant's photo.

22 Q Okay, do you remember what your reaction was  
23 when you saw the defendant's photograph?

24 A Shaking, and I was panicky, and I just  
25 said, "That's the guy."

1 Q Okay, what did you do after you identified him  
2 to yourself? Did you tell anybody?

3 A The officer.

4 Q And did you have occasion to look at a photo  
5 array? Do you recognize Defendant's Exhibit  
6 Number 1?

7 A Yes.

8 Q And were you able to recognize anyone?

9 A Yes, number two.

10 Q Number two, is that the photograph that you're  
11 referring to?

12 A Yes.

13 Q Okay, and after you picked that photograph  
14 out, what happened next?

15 A He took me into the office, and I guess  
16 the police woman looked through the file  
17 number --

18 BY THE COURT:

19 Could you speak a little louder, Mrs.  
20 Williams?

21 BY THE WITNESS:

22 A I'm sorry. She looked through the file.

23 BY MS. LAKE:

24 Q Okay, but what did you do next after picking  
25 that photograph out? Did you have occasion to

1 look at any others, or what happened next?

2 A I didn't look at any more pictures after I  
3 picked that picture.

4 Q Did you have occasion to look at a line-up, a  
5 physical line-up?

6 A Yes.

7 Q And was that the same day?

8 A Yes.

9 Q Okay. Now, I'm going to hand you State's  
10 Exhibit 8 and ask if you recognize that?

11 A Yes.

12 Q Is that the line-up that you looked at?

13 A Yes.

14 Q And were you able to identify anyone?

15 A Yes.

16 Q And what number would that be?

17 A Number four.

18 Q And is that the same person that you  
19 identified in the photo?

20 A Yes, it is.

21 Q And, Mrs. Williams, State's Exhibit 17, which  
22 was originally Defense Exhibit Number 1, do  
23 you recognize that?

24 A Yes.

25 Q Okay, and that is the same photo array that



1       you were shown?

2       A       Yes.

3       Q       And you were able to identify the defendant?

4       A       Yes.

5       BY MS. LAKE:

6               At this time, I would move to admit  
7       State's Exhibit 17.

8       BY MR. KING:

9               Your Honor, leave to take the witness on  
10       voir dire?

11       BY THE COURT:

12               Yes.

13                       VOIR DIRE EXAMINATION

14                               BY

15                                       MR. KING

16       Q       Ms. Williams, when were you shown this array  
17       of photos?

18       A       At the -- at the police station.

19       Q       Okay.

20       BY THE COURT:

21               Again, you'll have to answer louder; the  
22       jury is having trouble hearing you now.

23       BY THE WITNESS:

24               I'm sorry.

25       BY MR. KING:

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252

MAY 23 1997

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

783

VANES 000798

1 Q Okay, when at the police station? Before the  
2 line-up?

3 A No, it was after the line-up?

4 Q After the line-up?

5 A I think so.

6 Q Now, by the line-up, I mean when six fellows  
7 are standing up on the stage with the height  
8 lines behind them and -- are we talking about  
9 the same thing?

10 A Yes.

11 Q And you say then you were shown State's  
12 Exhibit 17?

13 A Yes, yes.

14 Q Had you ever seen State's Exhibit 17 before  
15 the line-up?

16 A I saw that picture before the line-up.

17 Q All right. Who showed you State's Exhibit 17  
18 after the line-up?

19 A I think at the jail house -- I think at  
20 the jail house I seen it.

21 Q At the what, ma'am?

22 A Jail house.

23 Q Police station?

24 A Police station, right.

25 Q 13th and Broadway?

1 A Yes.

2 Q The same night you saw the line-up?

3 A Yes.

4 Q Do you have any idea who the policeman was  
5 that showed you? Let me ask you this: Was it  
6 the same policeman that took the statement  
7 from you?

8 A Yes.

9 Q Okay, so whoever that officer was, that's the  
10 same one that showed you that after the line-  
11 up?

12 A Yes.

13 Q Are you sure it was him?

14 A Yes, I think so.

15 Q Pardon me?

16 A I think so.

17 Q But you're not sure?

18 A I'm not sure.

19 Q And are you certain that all those six  
20 pictures were in State's 17, or might they  
21 have been different pictures?

22 A No.

23 Q No what?

24 A They're the same ones.

25 Q Okay, you're sure they're the same pictures



1 but you're not sure when you were shown that  
2 exhibit, is that correct?

3 A Right.

4 Q Pardon me?

5 A Right.

6 BY MR. KING:

7 No objection.

8 BY THE COURT:

9 All right, I'll admit it without  
10 objection.

11

12 WHEREUPON STATE'S EXHIBIT NUMBER 17 IS  
13 ADMITTED INTO EVIDENCE.

14

15 BY MS. LAKE:

16 Q Mrs. Williams, now, I'm going to ask you if  
17 you can identify, first of all, State's  
18 Exhibit 19, if you can identify that and what  
19 it is?

20 A Yes.

21 Q And what is it?

22 A It's my statement.

23 BY THE COURT:

24 Again, a little louder.

25 BY THE WITNESS:

1 A My statement. I'm sorry.

2 BY MS. LAKE:

3 Q And how many pages of your statement is it?

4 A It's three pages.

5 Q And did you sign that statement?

6 A Yes, I did.

7 Q I'm referring to page 3. Do you recall when  
8 it is that you looked at the line-up?

9 A Yes.

10 Q What time was it?

11 A It says 7:30.

12 Q You looked at the line-up at 7:30 and  
13 identified the defendant, is that correct?

14 A Yes.

15 Q Mrs. Williams, how sure are you that this  
16 defendant is the man that robbed you at  
17 gunpoint on February 27th, 1992?

18 A Very sure.

19 BY MS. LAKE:

20 Very sure.

21 BY THE COURT:

22 Before we start cross, let me just ask the  
23 jury: I determined that we would take this  
24 witness up today and we would go until about  
25 5:00. Does anyone need to make a call home

1 because we're going to stay until about 5:00  
2 today? Okay, let's take a short break and let  
3 anybody that needs to make phone calls make  
4 phone calls. Don't talk about the case while  
5 you're outside the courtroom.

6 Ma'am, just take about a five-minute break  
7 and you'll be back on the witness stand.  
8 We're doing this for the benefit of the jury.

9  
10 WHEREUPON THE COURT RECESSED AND  
11 RECONVENED AND THE FOLLOWING PROCEEDINGS WERE  
12 HELD IN THE PRESENCE AND HEARING OF THE JURY:

13  
14 CROSS-EXAMINATION

15 BY

16 MR. KING

17 Q Ms. Williams, let's talk for a minute here  
18 about your recollection of times. As I  
19 understand your testimony, the last time you  
20 recollect was looking at your watch and seeing  
21 9:30 after this fellow that robbed you had  
22 left, am I right?

23 A Yes.

24 Q Now, do you know how long it was that you were  
25 on the floor there for the last time, from the



1 | time this fellow left to the time you looked  
2 | at your watch and saw it said 9:30?  
3 | A Well, it felt like forever.  
4 | Q Sure. Do you know?  
5 | A Maybe about fifteen minutes.  
6 | Q Well, I mean what you know is when you hear  
7 | this noise, this rustling-like noise at your  
8 | bedroom window, which is what wakes you out of  
9 | a sleep, and when you get up to investigate  
10 | that, you noted that the time was a quarter  
11 | till 9:00, am I correct?  
12 | A Right.  
13 | Q And that was significant because 9:00 o'clock  
14 | was wake-up time to get yourself prepared to  
15 | go to work, am I correct?  
16 | A Right.  
17 | Q So you get up out of a sleep, you turn on some  
18 | lights -- I believe you ended up with the  
19 | hallway lights, the living room lights and  
20 | your bedroom lights on, am I correct?  
21 | A Yes.  
22 | Q You check out another window, go back to bed,  
23 | lay down and close your eyes because you have  
24 | a few minutes to sleep before you have to get  
25 | up at 9:00 o'clock, am I correct?

1 A Yes.

2 Q Now, if you can recall, did you doze back off  
3 or did you stay awake until you heard the  
4 knock on the door and the voice saying it was  
5 your neighbor?

6 A No, I didn't doze back off.

7 Q So you stayed awake. In any event, some time  
8 after 8:45, you laid back down, there's a  
9 knock on the door, it's your neighbor, you  
10 open the door, am I correct?

11 A Yes.

12 Q Now, the person that comes in after you open  
13 the door, from the time you open that door  
14 until the alarm clock goes off, to the best of  
15 your ability to recall -- and if you can't  
16 recall, that's fine -- how much time passed?

17 A I can't recall.

18 Q All right, you related for us pretty much in  
19 chronological order what this man that came  
20 into your house did, right, from beginning to  
21 end, am I correct?

22 A Yes.

23 Q You didn't, you know, jump around, you told us  
24 he did this, then this, then this, then this,  
25 culminating in leaving, am I correct?

1 A Yes.

2 Q What was this fellow doing when the alarm went  
3 off? Right at the instant the alarm clock  
4 went off, what was this fellow doing and where  
5 were you?

6 A He was standing right behind me.

7 Q Where?

8 A In the dining room.

9 Q Okay. Was this before or after the business  
10 with the screwdriver and --

11 A It was before.

12 Q Okay, what was the closest to him doing out of  
13 what you told us?

14 A At that time, when the alarm clock -- he  
15 was telling me to go lay down on the  
16 floor.

17 Q For the first time?

18 A Yes.

19 Q All right, so fairly quickly after he got  
20 there, the alarm went off, am I correct? Was  
21 this before he put the pillow over your head?

22 A No.

23 Q Okay.

24 A The alarm clock went off after the pillow  
25 incident.



1 Q All right, so you had already been -- okay, he  
2 comes in, you open the door. The first thing  
3 you see is a gun in your face, am I correct?

4 A Yes.

5 Q And you saw that gun well enough to know  
6 not only was it a dark in color gun but  
7 you also noticed that it wasn't a  
8 revolver, didn't you?

9 A Yes.

10 Q Because there wasn't that cylinder in the  
11 center?

12 A Yes.

13 Q So you knew from seeing that gun right in your  
14 face, which is the first thing you see when  
15 you open this door --

16 A I saw his face and the gun.

17 Q Well, the gun is put right into your face, is  
18 it not?

19 A Yes.

20 Q And you look at it and you know it's an  
21 automatic weapon, is that correct?

22 A Yes.

23 Q Now, does he have you turn around and follow  
24 you with the gun at your back into your home?

25 A No.

1 Q All right, tell me what happened.  
2 A I'm walking backwards.  
3 Q All right, how far into your house could you  
4 go backwards?  
5 A Until he could shut the door after  
6 himself.  
7 Q After he shut the door, did you turn around  
8 then?  
9 A Yes.  
10 Q And that's when you're led through the house  
11 with him with the gun in your back, am I  
12 correct?  
13 A Yes.  
14 Q So as soon as he's able to come in long enough  
15 to close the door behind him, you're turned  
16 around, back to him, taken through the house,  
17 am I correct?  
18 A After he closes the door.  
19 Q All right. So not very much time at all  
20 passes from the door opening to the door  
21 closing, am I correct?  
22 A Right.  
23 Q Now, at this point, the demand is made for  
24 money, am I correct?  
25 A Yes.

1 Q You direct him into the bedroom because you  
2 have fifty bucks or fifty dollars,  
3 thereabouts, on your dresser, am I correct?  
4 A Yes.  
5 Q Once you're inside the bedroom -- do you go  
6 immediately to the bedroom once he turns you  
7 around and is marching behind you?  
8 A Yes.  
9 Q All right. Once you're in the bedroom, you're  
10 told to lay down on the floor?  
11 A Yes.  
12 Q Do you do so?  
13 A Yes.  
14 Q And it's at this point that he takes the  
15 fifty dollars off the dresser, am I  
16 correct?  
17 A Yes -- before he already have it.  
18 Q He already had the money?  
19 A He already has the money.  
20 Q Now, you got on the floor?  
21 A Yes.  
22 Q And when you're down on the floor this time,  
23 the pillow is put over your head?  
24 A He rumbled through the room first.  
25 Q Yeah, I know some other stuff happened; I'm



1 just trying to see if we're at the same  
2 general point here.

3 A I'm sorry.

4 Q When he told you to lay down for the first  
5 time in the bedroom --

6 A Yes.

7 Q -- did you ever get up before he put the  
8 pillow over your head?

9 A No.

10 Q Okay, so you're in the bedroom, he's  
11 rustling through drawers and whatever  
12 else, and you're seeing a little bit out  
13 of the corner of your eye some stuff being  
14 tossed about, and then he wants more  
15 money, am I correct?

16 A Yes.

17 Q And then using the pillow and, "I'm going to  
18 count to five," and all that business, that  
19 happens then, am I correct?

20 A Yes.

21 Q The alarm still hasn't gone off, has it?

22 A No.

23 Q So we're some time prior to 9:00 o'clock, at  
24 least according to the times on your clock, am  
25 I correct?

1 A Yes.

2 Q Were your clocks -- if you know -- were they  
3 pretty accurate? I mean did you set them off  
4 the radio, or like some people, did you set  
5 them fast? Like an alarm clock, some folks  
6 set it fast.

7 A No.

8 Q Okay, yours were pretty accurate as far as  
9 you're concerned?

10 A Yes.

11 Q Was your watch in sync with your alarm clock,  
12 if you know?

13 A Yes, 'cause I set it from them.

14 Q You set it from them?

15 A Uh-huh.

16 Q So whatever time was on your watch, the same  
17 time, as best you know, was on your alarm  
18 clock, am I right?

19 A Yes.

20 Q So we're doing this pillow and all this other  
21 stuff, then counts to four as I recall your  
22 testimony, and then what? Do you get up?

23 A He tells me to get up.

24 Q You get up and then you go to a different  
25 room?

1 A Exactly.

2 Q Okay, is this looking for the phone now?

3 A Yes, we are.

4 Q And is he behind you with the gun?

5 A Yes, he is.

6 Q All right, walking you through the house.

7 Now, where are you the next time you're told

8 to lay down, what room?

9 A The dining room.

10 Q Okay. And you go pretty much from the bedroom

11 -- once you get up, him behind you with the

12 gun -- do you pretty much go to the dining

13 room or do you stop at another room?

14 A Yeah, you go to the dining room; it's a

15 hallway and then you go to the dining

16 room.

17 Q Well, is that where he took you?

18 A Yes.

19 Q And then makes you lay down again?

20 A No, he takes me -- no, we are going

21 through the dining room --

22 Q Uh-huh.

23 A -- and we stopped in the dining room, and

24 that's where he starts to look through my

25 coat and stuff.



1 Q Is he still behind you?

2 A When he looked through my coat, he's

3 standing like right next to me.

4 Q You're indicating to your left, is that

5 correct?

6 A Right.

7 Q Now, the lights aren't on in the dining room?

8 A Right.

9 Q In any event, he looks through the coat. Then

10 what? Does he march you around again or make

11 you lay down?

12 A No, he grabs me to pull me in front of

13 him, and then we walk toward, you know,

14 going toward the kitchen to look for the

15 phone --

16 Q Okay.

17 A -- and right when you're in the dining

18 room, it's a doorway right there and you

19 can look directly in the kitchen, and

20 that's when I noticed the phone's not

21 there. Then the dining room is like cut

22 off right here, and then it's the living

23 room with a big opening, the living room.

24 Q Okay, you go into the living room?

25 A Yes.

1 Q And the alarm still hasn't gone off, am I  
2 correct?

3 A When we're standing in the dining room, it  
4 goes off right there.

5 Q After he has gone through your coat?

6 A Right.

7 Q Okay. That's when it goes off and this guy  
8 says, "I got to get out of here. It's time to  
9 leave," or something to that effect, am I  
10 correct?

11 A He says, "I got to get out of here." He  
12 asked me, "What was that?" I said, "My  
13 alarm clock. I could go turn it off," and  
14 he said, "No," and told me to, "Just go  
15 lay down."

16 Q So that just kept ringing?

17 A Right.

18 Q Did you ever shut that -- I mean we know it's  
19 not ringing today -- did you ever shut it off  
20 that evening?

21 A Yes.

22 Q Okay, after he had left for the last time?

23 A Yes.

24 Q All right. So this is buzzing the whole time,  
25 am I correct?

1 A Exactly.

2 Q All right. So from that point forward in the  
3 dining room when the alarm clock goes off, he  
4 has already taken the money from your bedroom,  
5 rifled through the drawers and whatever else  
6 while you're on the floor, he has taken you  
7 in, gone through your coat in the dining room  
8 where the lights were off, he has gone looking  
9 for the phone in the kitchen. Now, you've  
10 gone back toward the living room with him  
11 behind you with the gun, am I correct?

12 A Yes.

13 Q And this is when the alarm goes off?

14 A Yes.

15 Q Now, at that point, and after he says, "I've  
16 got to get out of here," do you stay standing  
17 or do you get --

18 A I'm standing, he's standing there.

19 Q Now, while this guy is doing this stuff, one  
20 of the things you recollect him saying is he  
21 doesn't like to rob black people but that if  
22 you knew his situation, you would understand,  
23 or words to that effect, am I correct?

24 A Yes.

25 Q If you knew his situation. Did you have any



1 clue of what was meant by that, "if you knew  
2 his situation"?

3 A No, I didn't.

4 Q The way this guy was looking for money and  
5 everything, you know, in your coat, your  
6 dresser and all over the house, he appeared to  
7 be fairly desperate, didn't he?

8 A Yes, he did.

9 Q One of the other things you noticed, at some  
10 point after he has invaded your home, this guy  
11 takes time out to try to get a cold drink from  
12 the refrigerator, am I correct?

13 A Yes.

14 Q But doesn't want beer, am I correct?

15 A Yes.

16 Q In fact, he complained that the only thing  
17 you've got in your refrigerator is beer, you  
18 don't have any cold water, you don't have any  
19 cold pop, anything like that, am I correct?

20 A Yes.

21 Q And then one of the things you remember about  
22 this guy is he's telling you he needs a car  
23 but he doesn't want your car?

24 A Yes.

25 Q Was your car in the driveway or parked out

1 front?

2 A Right in front of the house.

3 Q What kind of car did you have?

4 A A white car.

5 Q Year?

6 A '88.

7 Q An '88. What kind of car?

8 A Escort.

9 Q A 1988 Escort?

10 A Yes.

11 Q And this guy who was desperately going through  
12 your house, he doesn't want your '88 Escort?

13 A No.

14 Q Never even demanded or asked for your keys,  
15 did he?

16 A No.

17 Q But then he asked you for a screwdriver, am I  
18 correct?

19 A Yes.

20 Q Now, one of the things you said earlier when I  
21 was asking you questions, Ms. Williams, was,  
22 you know, asking about times and trying to  
23 figure out how long different things took, one  
24 of the things you shared with us was being in  
25 this situation, obviously terrifying, am I

1 correct? I mean you were scared?

2 A Yes.

3 Q "It seemed like an eternity," I think was your  
4 phrase, or, "seemed like forever," or  
5 something like that, am I correct?

6 A Yes.

7 Q All right. And then after the guy leaves the  
8 first time, you think it's safe to at least go  
9 out the door, he pops back in, so it was even  
10 scarier, wasn't it?

11 A Yes.

12 Q You don't know when this guy is going to come  
13 back. But would it be accurate to say that  
14 even though you look at your watch when you  
15 think it's safe to do that -- now, you don't  
16 look at your watch like when he walks out of  
17 the house the last time, do you?

18 A I didn't look at my watch until the last  
19 time he left.

20 Q What I'm saying is: Did you look at your  
21 watch when you thought it was safe to get up  
22 or did you look at your watch when he walked  
23 out the door the last time? If you're  
24 following me.

25 A I understand.



1 Q Okay.

2 A I looked at my watch after he leaves.

3 Q Like right away?

4 A Not exactly right away.

5 Q Okay. And when you do look at your watch,

6 it's 9:30?

7 A No, I said I was saying to myself, "At

8 9:30, I'm going to get up."

9 Q Oh, okay.

10 A And it was like twenty-five after.

11 Q Well, do you know? And this may be something

12 you don't remember, and that's totally

13 understandable. Do you really remember what

14 time it was when you looked at your watch?

15 A Yes, I do.

16 Q Okay, what time was it?

17 A It was 9:25.

18 Q And how long before you looked at your watch

19 and saw 9:25 on the dial had this guy walked

20 out of the house.

21 A Right after he walked out.

22 Q You mean like right as he's passing through

23 the doorway or --

24 A No.

25 Q -- did you let some time pass?

1 A I let a little bit of time pass.

2 Q Okay. So your house is located over on --

3 what was that, Connecticut?

4 A Yes.

5 Q The 4400 block?

6 A Yes.

7 Q Connecticut, how many streets west of

8 Massachusetts is Connecticut?

9 A A street over I think.

10 Q The next street over?

11 A Yes.

12 Q Because if you're headed east from Broadway,

13 you've got Broadway, you've got Massachusetts,

14 Connecticut --

15 A Yes.

16 Q -- and Delaware, Maryland, Pennsylvania, is

17 that right?

18 A Yes.

19 Q Okay. So you're one block over, one block

20 east of Massachusetts -- and those are short

21 blocks running east and west, am I right?

22 A Yes.

23 Q I mean the blocks are much longer north and

24 south there --

25 A Yes.

1 Q -- than they are east and west?

2 A Yes.

3 Q All right, so you're one short block over from  
4 Massachusetts and you're two blocks north of  
5 the 4600 block, correct? 4400 is two blocks  
6 north of 4600, correct?

7 A Yes.

8 Q Okay. Now, in terms of -- obviously when you  
9 feel it's safe at some time after 9:25, you  
10 arrange to call the police and tell them what  
11 happened, is that correct, ma'am?

12 A Yes.

13 Q And you talked to a policeman that very night,  
14 didn't you?

15 A Yes.

16 Q Now, you were -- would it be accurate to say  
17 that when you got a chance to talk to the  
18 policeman that night that you did your best to  
19 accurately tell him what happened?

20 A Yes.

21 Q All right. I'm sure you were still scared,  
22 weren't you?

23 A Yes.

24 Q But did you feel like you were capable of  
25 giving a decent description of what happened?



1 A Yes.

2 Q All right. One of the things they wanted to

3 know -- and was this policeman in uniform?

4 A When he came?

5 Q Yes.

6 A Yes, he was.

7 Q When the policeman in uniform came, one of the

8 things he wanted to get from you was a

9 description as best he could of the fellow

10 that did this to you, am I correct, ma'am?

11 A Yes.

12 Q And did you do your level best to give him

13 accurate information?

14 A Yes.

15 Q Do you recollect the officer being there some

16 time shortly after 10:00 p.m. that evening?

17 A Yes.

18 Q And came to your house, am I correct?

19 A Yes.

20 Q Do your recall the description you gave the

21 person that had done this to you?

22 A Yes.

23 Q Okay, what do you recall?

24 A That he had on a black hat, black leather

25 coat -- he had on all black. And he had

1 something red, maybe a red bandanna or  
2 something.

3 Q Where was that?

4 A Around his head.

5 Q Under the hat?

6 A Yes.

7 Q Do you remember telling the height, how tall  
8 this fellow was?

9 A Yes.

10 Q How tall did you tell them?

11 A About five ten, five nine.

12 Q Well, do you remember telling this officer,  
13 the first policeman you're talking to on the  
14 very night this happened, that the fellow that  
15 did this to you was five foot seven inches  
16 tall?

17 A No, I don't.

18 Q He had bad skin?

19 A Yes.

20 Q Twenty-five years old or thereabouts?

21 A Yes.

22 Q Medium complexion?

23 A Yes.

24 Q Slim build?

25 A Yes.

1 Q Black clothing?  
2 A Yes.  
3 Q Black leather jacket?  
4 A Yes.  
5 Q Do you recall now that it was a black leather  
6 jacket?  
7 A Yes.  
8 Q A red bandanna?  
9 A Yes.  
10 Q And a black Kangoll cap?  
11 A Yes.  
12 Q Now, a Kangoll cap is a manufactured cap, am I  
13 correct?  
14 A Yes.  
15 Q Now, they make a couple different styles,  
16 don't they?  
17 A Yes.  
18 Q They make one that's sort of rounded and  
19 it's got like a little tiny brim in the  
20 front and back and all the way around?  
21 A It wasn't like that.  
22 Q This was like a cap, am I correct?  
23 A It was like a hat, like a hat.  
24 Q Okay, describe it. Did it have a little bill  
25 on it?



1 A Yes.

2 Q A little thing on the front?

3 A Yes.

4 Q Do you know it was a Kangoll -- this Kangoll  
5 carries an insignia of a little kangaroo.

6 A Well, it was made like one.

7 Q Okay, what I'm wondering is if did you happen  
8 to see if it actually had a kangaroo on it or  
9 anything?

10 A No, no.

11 Q Okay. So that's the cap we have. Then we  
12 have a red bandanna underneath the cap, am I  
13 correct?

14 A Yeah, I think -- yeah.

15 Q I'm sorry, ma'am?

16 A Yes, I had told the officer, "I think he  
17 had a red bandanna on his head."

18 Q And one of the things initially you thought is  
19 this fellow was wearing leather gloves, am I  
20 correct?

21 A Yes.

22 Q I'm just talking about initially. Now, later  
23 -- correct me if I am wrong -- later you  
24 thought about it some, and you're not sure  
25 about the gloves, is that correct?

1 A He didn't have any on.

2 Q He didn't have any on?

3 A After I thought about it, you know, he  
4 didn't.

5 Q We met one time before this, am I right, back  
6 in April, early April, was it? Do you  
7 remember?

8 A When I said -- when I went down --

9 Q When I asked you questions and --

10 A Okay.

11 Q Okay, and do you recall at that time saying  
12 you just remember at some point when you  
13 reached up you touched something that might  
14 have felt like a glove?

15 BY MS. LAKE:

16 Objection, improper impeachment.

17 BY MR. KING:

18 I'm not impeaching the witness.

19 BY THE COURT:

20 Well, it might have that effect.

21 BY MR. KING:

22 Q Let me just ask you now, today: Are you  
23 saying now this person did not have gloves?

24 A Yes, I'm saying he did not have gloves.

25 Q Now, is there any particular reason that you

1 can think of why you might have mentioned  
2 gloves to the first policeman that you talked  
3 to?

4 A 'Cause I told him that when I was tussling  
5 with him like this, I grabbed something.

6 Q I see. So actually that might have even been  
7 a jacket or just about anything, right?

8 A Yes.

9 Q So now you're sure this guy didn't have gloves  
10 on?

11 A Yes.

12 Q And this guy was all over your dresser and in  
13 your dresser and was in your kitchen and in  
14 there rooting around in the cabinets, even  
15 maybe I think at one point you thought maybe  
16 he was looking for a glass, am I right?

17 A Yes.

18 Q And when did you leave out of that house and  
19 go to Indianapolis, about how long ago?

20 A I've been in Indianapolis for a month.

21 Q Okay. From the night this happened until you  
22 left to go to Indianapolis, did the police,  
23 Gary or Lake County or anybody, ever come over  
24 there and look for a fingerprint?

25 A No.



1 Q Never came over there and took pictures of  
2 anything?

3 A No.

4 Q Now, it sounds as though from the time this  
5 man came to the door of your home, put the gun  
6 in your face, with all these things that he  
7 did, while you were periodically able to look  
8 at this man's face, it sounds like from your  
9 testimony that most of the time this man  
10 either has you lying on the floor face down or  
11 standing behind you with a gun pressed in your  
12 back walking you from one point to the other.  
13 Is that accurate to say, ma'am, that in terms  
14 of most of the time from the time this guy  
15 came into your house, you're either face down  
16 or in front of him with him with a gun behind  
17 you, is that correct? I'm not saying all the  
18 time but most of the time.

19 A Yes.

20 Q Did you ever discover, you know, when all this  
21 happened and you had a chance to recollect a  
22 little bit, did you ever see if anything  
23 beside your fifty dollars from the dresser had  
24 been taken by this man? Were you missing  
25 anything else from within your

1 home?

2 A Yes.

3 Q What?

4 A A two-dollar bill.

5 Q A two-dollar bill?

6 A Yes.

7 Q Where had that been the last you knew?

8 A In my purse.

9 Q All right, so this fellow apparently went  
10 through your purse pretty good, is that right?

11 A Yes.

12 Q Did you have it tucked away inside the purse?

13 A No.

14 Q In a wallet?

15 A It was between a wallet and a book, a  
16 telephone book.

17 Q All right, had this fellow thrown all your  
18 stuff out of your purse?

19 A Yes.

20 Q Did you tell the policemen this?

21 A Yes.

22 Q Any talk, any mention about somebody coming  
23 over to see if maybe there might be a  
24 fingerprint or two or ten?

25 A Later.

1 Q Later. But they didn't do it?

2 A No.

3 Q But they didn't do it?

4 A No.

5 Q One of the first things you noticed about this  
6 person that assaulted you in your home that  
7 night, after the gun is produced in your face,  
8 was scars on his face, is that correct?

9 A Yes.

10 Q A noticeable feature, am I correct?

11 A Yes.

12 Q Scars that looked as though they had developed  
13 from either a bad bout of acne or chicken pox  
14 or something of that nature, is that correct?

15 A Yes.

16 Q A pitted sort of appearance in terms of the  
17 scarring?

18 A Yes.

19 Q The cheeks I believe you said --

20 A Yeah.

21 Q -- the cheek area?

22 A Yes.

23 Q And that was something that really, you know,  
24 in terms of recollecting somebody you just  
25 saw, that was something that really stuck out



1 in your mind, am I correct?

2 A Yes.

3 Q Now, after the policeman talks to you at your  
4 home which is on February 27th, a Thursday  
5 night, your next contact with the police would  
6 have been Wednesday, March the 3rd, am I  
7 correct? Do you know?

8 A It was the next day.

9 Q The next day?

10 A The next day I had to go down there.

11 Q Friday, the 28th?

12 A I think so.

13 Q Okay. You're probably right; let me look.  
14 What did you do that next day? Did you talk  
15 to a policeman? The reason I ask, Ms.  
16 Williams, is the statement -- you know, the  
17 prosecutor showed it to you a few minutes ago.

18 A Yes.

19 Q That statement appears to be dated March 3rd.  
20 So might a few days have passed?

21 A Yes.

22 Q I know it has been a little bit. Well, let's  
23 put it this way: When you did go to the  
24 police station for the first time --

25 A I think it was -- I'm trying to remember

1 the day.

2 Q Let me ask you this: A policeman came to your  
3 house, you give the description we just went  
4 over here, am I correct?

5 A Yes.

6 Q Okay, you don't go to the police station that  
7 night, am I correct?

8 A Right.

9 Q When you do go to the police station, whenever  
10 that might have been, is that when you give  
11 the statement and look at the pictures and the  
12 line-up and all that business, all in the same  
13 day?

14 A No.

15 Q All right. Well, did you give the statement?

16 A Yes.

17 Q Well, did you look at the date on the  
18 statement the prosecutor showed you? This is  
19 State's 19 for identification.

20 A Okay.

21 Q Ms. Lake asked you some questions a minute  
22 ago.

23 A Okay.

24 Q That's your statement, right?

25 A Yes.

1 Q What's the date?

2 A It says the 3rd.

3 Q March the 3rd?

4 A Yes.

5 Q Okay, between February 27th when the policeman  
6 talked to you at home and March the 3rd when  
7 you gave this statement, had you made an  
8 earlier visit to the police station?

9 A Yes.

10 Q To do what?

11 A Give them my statement; I gave them a  
12 statement.

13 Q That one?

14 A I didn't sign this till the 3rd, till the  
15 same day that I went down and saw the  
16 line-up.

17 Q You're saying you gave the statement but --

18 A I talked to Officer Outlaw when I went the  
19 first time.

20 Q Oh, you talked to him?

21 A Right.

22 Q Do you know if he typed up a statement?

23 A Oh, no, he didn't.

24 Q Okay. All right, what did you do, talk to him  
25 up in the Detective Bureau?



1 A Right.

2 Q Tell him basically what had happened?

3 A Right.

4 Q I see. You don't know if he took anything

5 down or not?

6 A No, he didn't.

7 Q All right, so that's Friday the 28th that you

8 did this?

9 A Yes, I think it was the next day.

10 Q The next day?

11 A I think it was the next day.

12 Q All right. Then the following Wednesday you

13 go, you give the statement, you look at

14 pictures and look at a line-up, am I correct?

15 A Yes.

16 Q All right. And you've told me you don't

17 recollect telling the first policeman the

18 night this happened the fellow that did this

19 was five foot seven inches?

20 A No.

21 Q You've told me that. Do you recollect that

22 when you gave your statement, State's Exhibit

23 19 for identification, on March 3rd, a

24 Wednesday, that you said the guy was five foot

25 ten inches tall?

1 A About five nine, five ten.

2 Q Five nine, five ten?

3 A Yes.

4 Q Then you picked out a picture, then you go  
5 look at a line-up and you pick out the guy in  
6 the line-up whose picture you saw if I  
7 understand your testimony correctly.

8 A Yes.

9 Q Was that within hours, one or the other? Were  
10 you there at the police station the whole time  
11 to do this statement, look at the picture,  
12 look at the line-up?

13 A No.

14 Q Did you come back and forth?

15 A Yes.

16 Q Okay. Were other folks there?

17 A Yes.

18 Q All right, at the line-up?

19 A Were my folks at the line-up?

20 Q No, no, not your folks, other people. Were  
21 other people there at the line-up, you know,  
22 like looking at the line-up? I'm not --

23 A Yes, Officer Outlaw was with me.

24 Q Okay. You lost a two-dollar bill and you lost  
25 fifty dollars in whatever denomination it



1 might have been, is that correct?

2 A Yes.

3 Q All right. How long had you been living in  
4 that neighborhood?

5 A Three weeks.

6 Q Three weeks?

7 A Yes.

8 BY MR. KING:

9 That's all I have, Ms. Williams. Thank  
10 you very much.

11 REDIRECT EXAMINATION

12 BY

13 MS. LAKE

14 Q Ms. Williams, Mr. King asked you about the  
15 offense report. The night that this happened,  
16 you talked to a police officer, is that  
17 correct?

18 A Right.

19 Q And you told that police officer about the  
20 gloves?

21 A Yes, I said, "He might have had on gloves  
22 but I'm not sure."

23 Q But you told him at that point, you remembered  
24 he was wearing gloves?

25 A Yes.

1 Q And then no one came in your house and took  
2 pictures?

3 A No.

4 Q And no fingerprints were taken at that time?

5 A No.

6 Q Okay. Now, that offense report, did you read  
7 it over?

8 A No.

9 Q Did you ever sign that offense report?

10 A I don't know.

11 Q I'm now going to hand you State's Exhibit 20  
12 and ask if you recognize what that is?

13 A That's the report.

14 Q That's the offense report?

15 A That the officer --

16 Q Okay, look it over and tell me if you had an  
17 opportunity to sign that or if you did sign  
18 it?

19 A No.

20 Q Did you read it over when you talked to the  
21 police officer?

22 A No.

23 Q Or did you just talk to him?

24 A I just talked to him.

25 Q Okay, and then on March the 3rd, you gave a

1 statement to the police, in fact, right?

2 A Yes.

3 Q And that statement you did look over and you  
4 did sign, correct?

5 A Yes.

6 Q And you told the police then that the  
7 defendant was wearing a black leather jacket?

8 A Yes.

9 Q And you told him he was wearing a black  
10 Kangoll cap?

11 A Right.

12 Q You also told him he had dark jeans and dark  
13 shoes, right?

14 A Right.

15 Q And he was about five nine or five ten?

16 A Yes.

17 Q He had a slender build?

18 A Yes.

19 Q He had a medium complexion?

20 A Yes.

21 Q And you said that he had bump-like scars on  
22 his face, is that right?

23 A Yes.

24 Q Has his appearance changed today now that you  
25 look at him?



1 A No.

2 Q Are the bump-like scars on his face the same  
3 or are they different in any way?

4 A They're the same.

5 Q Is there any doubt in your mind that that is  
6 the man that robbed you at gunpoint?

7 A No.

8 Q When you picked this defendant's picture out  
9 of the hundreds of photos that you looked at,  
10 did anyone tell you which photo to pick?

11 A No.

12 Q Did anyone suggest in any way which photo to  
13 choose from?

14 A No.

15 Q When you picked this defendant out of the  
16 physical line-up later on, did anyone suggest  
17 to you which person to pick?

18 A Oh, no.

19 Q And did you talk to a person by the name of  
20 Kim Belinsky about your identification?

21 A No.

22 Q And did anyone suggest to you in any way what  
23 person to look for?

24 A No.

25 BY MS. LAKE:

1           Nothing else.

2                           RE CROSS-EXAMINATION

3                           BY

4                           MR. KING

5   Q   All right, ma'am, the prosecutor asked you --  
6       going back -- you originally said something  
7       about gloves. Now, you told me there was a  
8       discussion with a Gary policeman about  
9       fingerprinting within your home?

10  A       Yes.

11  Q   When was that? About the time you gave the  
12       statement?

13  A       I had told them at that time.

14  Q   As of March 3rd, you had told the Gary police?

15  A       That I remember he didn't have on gloves.

16  Q   That he didn't have gloves on?

17  A       Yes.

18  Q   And you had told them about this guy rifling  
19       through the closet in the bedroom and  
20       everything else. And did they actually  
21       mention fingerprinting?

22  BY MS. LAKE:

23                           I'm going to object as to hearsay  
24                           and to which police officer he's  
25                           referring to.



1 BY MR. KING:

2 Well, it's not hearsay, it's not truth of  
3 the matter, it's --

4 BY THE COURT:

5 Well, if we can limit it to that.

6 BY MS. LAKE:

7 To which police officer?

8 BY THE COURT:

9 First of all, before you answer this, and  
10 I don't know if you can answer this question,  
11 but let me admonish the jury: At this point I  
12 believe the witness is being asked to repeat  
13 what a Gary police officer said to her. We  
14 don't know who that officer is, and this  
15 person has not been on the witness stand, so  
16 this is not evidence in this case -- it's not  
17 subject to cross-examination at this point --  
18 but I am going to permit her to answer it to  
19 show what effect it had on this witness  
20 subsequently and in the case.

21 BY MR. KING:

22 Q Was it the same officer that took your  
23 statement from you, the statement that was  
24 signed?

25 A Yes.

1 Q Detective Outlaw?

2 A Yes.

3 Q Bruce Outlaw?

4 A Yes.

5 Q And at or before the time on March 3rd, 1992  
6 that this statement was taken, your  
7 recollection is that you specifically told the  
8 detective the guy that came in your home  
9 didn't have gloves on, is that correct?

10 A Yes.

11 Q And this detective specifically said something  
12 in your presence about checking for  
13 fingerprints?

14 A Yes.

15 Q And to this day, or at least until the time  
16 you moved out to move to Indianapolis, no one  
17 ever showed up to even look for a fingerprint,  
18 did they?

19 A No.

20 BY MR. KING:

21 That's all I have. Thank you, ma'am.

22 BY MS. LAKE:

23 Nothing else.

24 BY THE COURT:

25 Ma'am, you may step down. That's all.

1 Well, my watch shows 4:59, so we are going to  
2 recess pretty close to 5:00 o'clock. We are  
3 going to recess for the day at this point,  
4 ladies and gentlemen.

5 BY MR. KING:

6 May we approach for a second?

7 BY THE COURT:

8 Certainly.

9  
10 WHEREUPON THE FOLLOWING DISCUSSION WAS  
11 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
12 THE JURY:

13  
14 BY THE COURT:

15 What do you need?

16 BY MR. KING:

17 It's my request like at the end of the day  
18 when you do the admonishment, in addition to,  
19 "Do not discuss the case, you're not to form  
20 or express any opinion," to remind them at  
21 day's end in addition to not talking about it,  
22 they're not individually to make up their  
23 minds until they have heard all the evidence.  
24 The admonishments are to be such cure-alls, so  
25 let's see if it's --



1 BY THE COURT:

2 Yes, I think we'll address that, and also  
3 the possible press, people are here taking  
4 notes.

5 BY MR. KING:

6 Yeah, that they should not read anything.

7 BY THE COURT:

8 Right.

9 BY MR. KING:

10 I'm just saying then at day's end to  
11 remind them.

12 BY THE COURT:

13 Right.

14

15 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
16 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

17

18 BY THE COURT:

19 I want to remind all of you and admonish  
20 you that now that you have heard evidence in  
21 this case that each of you is not to form or  
22 express any opinion on the evidence that you  
23 have heard up to this point and that you are,  
24 in addition, not to converse about the  
25 evidence you have heard in this trial with

1 anyone, family or friends at home or among  
2 yourselves when you're here in the building or  
3 outside of the courtroom.

4 And, in addition, there probably will be  
5 some newspaper accounts of these proceedings,  
6 and it would be good advice if you do get the  
7 local paper, tomorrow morning when the papers  
8 come out, if you do get the paper, to have  
9 somebody else in the family go through the  
10 paper and get rid of, cut out, excise anything  
11 to do with this case so that you jurors do not  
12 read anything about these proceedings in a  
13 media account of the proceedings on radio or  
14 in the newspaper.

15 Media accounts are shorthand and they're  
16 not focused on the same way that evidence is  
17 at trial and they may contain information that  
18 would be prejudicial.

19 I believe we have a somewhat lengthy court  
20 call tomorrow. I am going to require that you  
21 all come in tomorrow again at 10:00 and we'll  
22 see how it goes. We may not be able to begin  
23 at that time; I hope we can. There are a  
24 number of things that need to be done --  
25 Thursday looks like a much lighter court call



1 -- but tomorrow, we're going to be very busy.  
2 I want to have you here and we'll have you in  
3 court as quickly as we can if it's after  
4 10:00.

5 The jurors are excused.

6  
7 WHEREUPON THE COURT ADJOURNED FOR THE DAY.

8  
9 WHEREUPON THE COURT RECONVENED AND THE  
10 FOLLOWING PROCEEDINGS WERE HELD OUTSIDE THE  
11 PRESENCE AND HEARING OF THE JURY ON JUNE 10,  
12 1992:

13  
14 BY MR. BENSON:

15 If we could approach, please?

16 BY THE COURT:

17 Yes.

18  
19 WHEREUPON THE FOLLOWING DISCUSSION WAS  
20 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
21 THE JURY:

22  
23 BY MR. BENSON:

24 There are two issues to be addressed. One  
25 of them is that in my Motion for Continuance

300

MAY 23 1997

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

1 which was filed and was denied by the Court, I  
2 indicated that the State of Indiana did not  
3 receive the names of the car dealers until I  
4 believe the first week of June. Defense  
5 counsel has pointed out to me that those names  
6 were mentioned in the Petition to Let Bail by  
7 Detective Bruce Outlaw, and at this time I  
8 want to apologize to the Court for that motion  
9 and apologize to defense counsel for having  
10 insinuated that during the argument.

11 BY THE COURT:

12 You did receive them?

13 BY MR. BENSON:

14 I did receive the names during the  
15 Petition to Let Bail. That was an inaccurate  
16 reflection and I apologize. Second of all,  
17 for the record, we have tendered the documents  
18 which the Court ordered us to in regards to  
19 those other three or four crimes in the Glen  
20 Park area which occurred the first week of  
21 June.

22 BY MR. KING:

23 And I got those this morning, and from my  
24 initial review of them, I don't think it's  
25 going to be an issue in the case. Simply, the

1 descriptions just aren't very thorough.

2 BY THE COURT:

3 Plus, there's more than one individual  
4 involved?

5 BY MR. KING:

6 Yeah, in each one of the instances. So  
7 there's really, realistically, not enough to  
8 go on at this point.

9 BY THE COURT:

10 All right.

11 BY MR. BENSON:

12 Does the Court need to see those to grant  
13 that part of the Motion in Limine?

14 BY MR. KING:

15 No, I concede to that.

16 BY THE COURT:

17 I would so grant that until we hear  
18 otherwise.

19 BY MR. KING:

20 Yes.

21 BY MR. BENSON:

22 Thank you, Judge.

23 BY THE COURT:

24 Okay, I think we're ready for the jury  
25 then, Mr. Bailiff.



1 WHEREUPON THE JURY WAS BROUGHT INTO OPEN  
2 COURT AND THE FOLLOWING PROCEEDINGS WERE HELD  
3 IN THEIR PRESENCE AND HEARING:  
4

5 BY THE COURT:

6 Well, folks, we did the best we could, but  
7 it was as long as we thought it might be on  
8 the court call of other cases. Mr. Benson and  
9 Mr. King have been popping in about every ten  
10 minutes to see if we're ready to get started  
11 and, now, we finally are, and we'll get back  
12 to this trial and pick up where we left off  
13 yesterday. Mr. Benson?

14 BY MR. BENSON:

15 Thank you, Judge. The State would call  
16 Officer Faulkner.

17 OFFICER RICHARD FAULKNER,  
18 having been first duly sworn upon his oath,  
19 testifies as follows:

20 DIRECT EXAMINATION

21 BY

MR. BENSON

Q Officer, would you please state your full name  
and spell it for the court reporter?

A Richard Earl Faulkner, F-a-u-l-k-n-e-r.

1 Q Mr. Faulkner, where are you employed?

2 A Gary Police Department.

3 Q And how long have you been with the Gary  
4 Police Department?

5 A Fourteen years.

6 Q And at this time, in what branch of the Gary  
7 Police Department do you work?

8 A What division?

9 Q Yes.

10 A The Patrol Division.

11 Q How long have you been in the Patrol Division?

12 A Off and on for fourteen years.

13 Q Officer, what are your general duties in that  
14 division?

15 A Patrolling the streets and taking reports,  
16 report writing.

17 Q You take reports at the scene of the  
18 occurrence, correct?

19 A Yes, I do.

20 Q I would like to direct your attention to  
21 February 27th of 1992 and ask you if you had  
22 occasion to take an offense report from a  
23 Rhonda Williams?

24 A Yes, I did.

25 Q Do you recall where that occurred at?



1 A I'd have to take a look at the report to  
2 refresh my memory of her address.

3 Q I would like to show you what's been marked  
4 for purposes of identification as State's  
5 Exhibit 21 and ask you to please take a look  
6 and read over that document.

7 A Okay.

8 Q Does that document refresh your memory as to  
9 where you took that offense report from?

10 A Yes, it does.

11 Q And where was that at, Officer?

12 A It was at 4409 Connecticut Street.

13 Q And that was the residence of Rhonda Williams?

14 A Yes, it was.

15 Q Do you recall what time that report was taken,  
16 approximately?

17 A Well, it was taken at approximately 10:00  
18 p.m.

19 Q And would you please tell the ladies and  
20 gentlemen of the jury how it came to be you  
21 were at her house?

22 A I was dispatched to take a report of a  
23 robbery at that location from police  
24 headquarters.

25 Q And in speaking with Ms. Williams, did she

1 give you a description of the individual who  
2 had robbed her?

3 A Yes, she did.

4 Q And what did she tell you about the person  
5 that robbed her?

6 A She said it was a male black, medium  
7 complexion with bad skin, he was about  
8 five seven -- she wasn't too sure on the  
9 height. She said he was of slender build  
10 and he had a black kangol cap on and red  
11 bandanna.

12 Q Did she describe -- strike that, please. Did  
13 she tell you what happened, how this crime had  
14 occurred?

15 A Yes, she did.

16 Q What did she say about how it occurred?

17 BY MR. KING:

18 Objection, hearsay. I cite  
19 Modisett v. State.

20 BY MR. BENSON:

21 May we approach, please?

22 BY THE COURT:

23 Yes.  
24

25 WHEREUPON THE FOLLOWING DISCUSSION WAS

1 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
2 THE JURY:

3  
4 BY THE COURT:

5 I believe there are three exceptions.

6 BY MR. KING:

7 Neither of which apply here in terms of  
8 the occurrence. The only thing that there was  
9 a foundation for impeachment laid upon was  
10 height.

11 BY THE COURT:

12 There is another exception as to identity  
13 though in Modisett.

14 BY MR. BENSON:

15 Yes, identification made after perceiving  
16 an individual; that is an exception to  
17 Modisett; that's the third prong of that. And  
18 since defense counsel has challenged --

19 BY MR. KING:

20 Well, excuse me, though. The question is  
21 not directed toward identification; that was  
22 asked and answered. Now, the question is,  
23 "What did she tell you about the occurrence?"  
24 That's a different animal.

25



1 BY THE COURT:

2 Could the occurrence have something to do  
3 with identification?

4 BY MR. BENSON:

5 Judge, defense counsel on cross-  
6 examination pointed out the difference  
7 between what Ms. Williams said to this officer  
8 about the height and what she subsequently  
9 said to Detective Bruce Outlaw. I believe  
10 that the jury now is entitled to examine the  
11 opportunity that she would have had to observe  
12 the individual, how long, and was she kneeling  
13 down, laying down. And defense counsel has  
14 questioned off the report, which is part of  
15 the officer's testimony.

16 BY MR. KING:

17 No, he's misrepresenting. During the  
18 either direct or cross-examination of Ms.  
19 Williams, there was nothing done by way of  
20 impeachment in terms of the opportunity to  
21 observe and the sequence of events. The only  
22 issue gone into was the height, which has been  
23 established and asked and answered. Now, this  
24 does not open the door for them to put  
25 Patterson evidence in. That was the only

1 point of impeachment with that witness.

2 BY THE COURT:

3 I don't think it can be based on the  
4 impeachment, but I do think there's an  
5 exception as to identity and perception.

6 BY MR. KING:

7 I understand. But what he is asking here  
8 is not on that point, is not on that point.  
9 It was carefully established with her both on  
10 direct and cross-examination what happened,  
11 when, what the time sequences were. The issue  
12 generated by cross-examination was the height  
13 description given. If the Court permits this  
14 testimony on just a narrative of what  
15 happened, it violates the defendant's right to  
16 confront, it violates the defendant's  
17 objection on the basis of hearsay.

18 BY THE COURT:

19 I'm trying to square it with Modisett,  
20 that's all, and with your rebuttal.

21 BY MR. BENSON:

22 Judge, defense counsel asked questions in  
23 detail about how many lights were on in the  
24 house during the crime, what rooms they walked  
25 through to the crime, which direction Ms.



1 Williams had been facing during the crime.

2 All that goes to her --

3 BY MR. KING:

4 Do you want to retrieve the exhibit,  
5 please? I think a review by the Court -- I  
6 think the Court would of necessity have to  
7 read -- since the basis is the document under  
8 the narrative section, there is nothing  
9 germane, even were it to be an exception, in  
10 that report to the question counsel is  
11 suggesting to the Court.

12 BY THE COURT:

13 But he's not asking about the report, he's  
14 asking, "What did she say to you about what  
15 happened?"

16 BY MR. KING:

17 Well, let me then take him on voir dire in  
18 order to attempt to establish that his basis  
19 for testimony would be the contents of the  
20 report.

21 BY THE COURT:

22 He has no independent recollection?

23 BY MR. KING:

24 I don't know what his answer will be.  
25

1 BY THE COURT:

2 Okay, you may.

3 BY MR. KING:

4 But I still want the Court to look at  
5 Modisett because I don't think this fits.

6 BY THE COURT:

7 Yes, I do want to look at Modisett.

8

9 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
10 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

11

12 BY MR. KING:

13 May I proceed?

14 BY THE COURT:

15 Yes.

16 VOIR DIRE EXAMINATION

17 BY

18 MR. KING

19 Q Officer Faulkner, when you're at the scene and  
20 you're talking to somebody complaining about  
21 having been the victim of a crime --

22 A Right.

23 Q -- you take notes, don't you?

24 A Yes, I do.

25 Q And then you prepare that in the form of what

1 is known in the Gary Police Department as an  
2 offense report, is that correct, sir?

3 A The way I do mine --

4 Q I'm sorry?

5 A The way I do mine, I put the information  
6 directly on the offense report rather than  
7 write it on a pad.

8 Q You put it right onto the offense report?

9 A This particular one, I put it directly  
10 onto the report.

11 Q All right, and by "this particular one," you  
12 mean, of course, State's Exhibit 21 for  
13 identification, is that correct?

14 A Yes, sir.

15 Q All right. Now, other than what is contained  
16 in the narrative section of State's 21 for  
17 identification, the contents of that is your  
18 complete recollection of what you were told by  
19 Ms. Williams about what happened and how it  
20 happened?

21 A Yes, it is.

22 Q Do you have -- apart and aside from State's 21  
23 for identification, do you have any  
24 independent recollection of any additional  
25 information that is not contained in State's



1 21?

2 A Any additional information that was told  
3 by her?

4 Q Yes, sir, about what happened or about the  
5 description.

6 A Well --

7 Q Let me ask you this: Did you put everything  
8 you recollect on the report?

9 A That I recollect, but it was more  
10 conversation; but I put, you know, the  
11 basic.

12 Q Do you happen to recall the additional  
13 conversation as you sit here today that's not  
14 on the report --

15 A Yes.

16 Q -- about what happened?

17 A Right.

18 Q Okay.

19 A Well, she had said that --

20 Q Okay, there are things that you recall that  
21 aren't on the report, is that your testimony?

22 A As far as our conversation, correct.

23 Q I understand. About what happened?

24 A Right.

25

1 BY MR. KING:

2 All right. Thanks.

3 BY THE COURT:

4 Mr. Benson, if I can have you back for  
5 just one second here.

6

7 WHEREUPON THE FOLLOWING DISCUSSION WAS  
8 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
9 THE JURY:

10

11 BY THE COURT:

12 Are you saying now that this is something  
13 consistent with what she said? You want him  
14 to testify consistently with what she said at  
15 trial?

16 BY MR. BENSON:

17 Yes, Your Honor, but it's also being  
18 offered -- I believe when defense counsel got  
19 into it with her about all the movement  
20 throughout the house and then questioned her  
21 about two possibly different height  
22 descriptions that resulted from her  
23 opportunity to observe that that I now, even  
24 under Modisett, have the opportunity now that  
25 counsel has opened that door --



1 BY THE COURT:

2 A recent fabrication or improper influence  
3 or motive?

4 BY MR. BENSON:

5 I think the inference was there was a  
6 recent fabrication of the five ten height.

7 BY MR. KING:

8 Your Honor, as the Court will recall the  
9 testimony was pointed out by the defense on  
10 cross-examination questioning of this witness  
11 that as of April the 6th, her testimony was  
12 five foot ten inches tall. And there was  
13 nothing that could fairly be read in the tenor  
14 of the cross-examination other than point out  
15 the height discrepancy of any recent  
16 fabrication.

17 But in any event, the prosecutor cannot  
18 say because she was impeached on the height  
19 that that, therefore, opens the door to the  
20 entire conversation that occurred. If it is  
21 not germane to the height, it is not relevant  
22 evidence under Modisett.

23 BY THE COURT:

24 How about the fingerprints? You pointed  
25 out there was a statement about gloves being

1 | worn and then later that there were no gloves.

2 | BY MR. KING:

3 |       Exactly, and if he chooses to ask a  
4 | question about the statement about gloves,  
5 | that's fine, I have no objection to that;  
6 | that's proper. But what he's attempting to do  
7 | is say, if you will, if the door is opened on  
8 | one issue, it's opened for all purposes.

9 | BY THE COURT:

10 |       Why wouldn't it be? Why wouldn't it be  
11 | her whole statement?

12 | BY MR. KING:

13 |       Because her whole statement is not germane  
14 | to the area she was impeached upon. It is  
15 | simply not germane.

16 | BY MR. BENSON:

17 |       When challenging identification in such  
18 | detail as counsel did -- he talked about her  
19 | opportunity to observe, which is directly  
20 | relevant to identity, and I just merely want  
21 | to clear up that she has always contended that  
22 | she had the ability to observe.

23 | BY MR. KING:

24 |       But it was clearly specified even during  
25 | cross what that opportunity was. We went in

1 more detail than she did on direct, but --

2 BY THE COURT:

3 Well, he can get into it too then about  
4 the identification of a person.

5 BY MR. KING:

6 For what purpose? You can't because it's  
7 an out-of-court declaration.

8 BY THE COURT:

9 But there's an exception in Modisett for  
10 identification if it goes to that.

11 BY MR. KING:

12 But my point is, it doesn't; that's  
13 precisely my point, that it does not go to  
14 that. He has established no foundation  
15 through her testimony.

16 BY THE COURT:

17 I guess you're objecting to what kind of  
18 actions was he doing at the scene of the  
19 offense is what you asked him, isn't it, most  
20 recently?

21 BY MR. KING:

22 "What did she tell you about what had  
23 happened inside?"

24 BY MR. BENSON:

25 Well, I can ask him a more specific

1 question, "What did she tell you about her  
2 observations, of her ability to observe?"

3 BY THE COURT:

4 Well, I think that would be permissible.

5 I understand there's no objection to it if you  
6 change your question to that.

7 BY MR. BENSON:

8 I will.

9 BY MR. KING:

10 But please note the continuing objection.

11 BY THE COURT:

12 Yes, I do.

13

14 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
15 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

16

17 BY MR. KING:

18 Will the question now be rephrased, Your  
19 Honor?

20 BY THE COURT:

21 It will be rephrased and permitted as  
22 rephrased.

23 BY MR. BENSON:

24 Q Officer, what did Ms. Williams tell you about  
25 her ability or opportunity to observe the



1 person who came into her residence?

2 A Well, she stated while she was on the  
3 floor, she looked up at him, she was able  
4 to get a description of him, the  
5 information she gave me.

6 Q Did she indicate to you how long this person  
7 was in the house for, approximately?

8 A Well, she didn't give me an approximate  
9 time, but she said she thought it was  
10 about twenty minutes; she said that, you  
11 know.

12 Q Did she indicate to you whether or not she  
13 thought the person who robbed her was wearing  
14 gloves or not?

15 A Well, this is the information she gave me:  
16 She said she thought she saw gloves on  
17 his hands.

18 Q And did you note that any place in your  
19 report?

0 A Yes, I did.

1 Q And that would be the report that's State's  
2 Exhibit 21?

23 A Yes, it is.

24 Q That is listed in what section of that report?

25 A This is listed in section 32.



1 Q And what specifically did you write down in  
2 regards to what she told you about whether or  
3 not this person was wearing gloves?

4 A Well, I wrote "black leather gloves" in  
5 the description.

6 BY MR. BENSON:

7 No further questions. Thank you very  
8 much, Officer.

9 BY THE WITNESS:

10 Okay.

11 CROSS-EXAMINATION

12 BY

13 MR. KING

14 Q For the benefit of the jury, you, as the first  
15 officer on the scene talking to the victim of  
16 a crime, and in your job of filling out an  
17 offense report such as State's Exhibit 21 for  
18 identification, after you write down what  
19 somebody who has been victimized tells you,  
20 that document is then disseminated to  
21 detectives in the case, is it not?

22 A Well, when I finish the report, I turn it  
23 over to my supervisor.

24 Q But your experience as a police officer, the  
25 detective investigating the case gets these

1 offense reports to help him develop the case,  
2 is that correct?

3 A Correct.

4 Q So this isn't simply for your own sake of  
5 recollection, you know when you're writing  
6 this information down that that will or could  
7 be used by others in your department to  
8 investigate a crime, is that correct?

9 A Correct.

10 Q Accuracy of that information is critical for  
11 the best possible investigation of a crime, is  
12 it not?

13 A That's correct.

14 Q Inaccurate information could seriously  
15 compromise a detective's ability to properly  
16 and thoroughly investigate a crime, isn't that  
17 correct?

18 BY MR. BENSON:

9 Objection. That question is  
0 argumentative.

1 BY MR. KING:

22 Q Have you been a detective? Have you served  
23 as a detective in the investigative mode?

24 A No, I haven't.

25 Q Have you had occasion to investigate crimes

1 after reports?

2 A Yes, I have.

3 Q Is accurate information important to you?

4 A Yes, it is.

5 Q If you don't have accurate information, you  
6 might not arrest the right guy, correct? That  
7 could be one downside to not having accurate  
8 information, isn't it?

9 A I don't know about not arresting them, but  
10 as far as information, it, you know, would  
11 be.

12 Q It's important, isn't it?

13 A It's important, yes.

14 Q Now, you said that she gave you a description.  
15 Now, I would expect this young lady was upset  
16 when she talked to you, am I correct?

17 A She was upset.

18 Q Having just gone through what she had been  
19 through, correct?

20 A She was nervous and upset, yes.

21 Q But in the course of questioning her, if you  
22 asked her a question, was her response a  
23 response to the question you asked?

24 A Yes, it was because I calmed her down and  
25 talked to her before we started writing.



1           We talked for a while and it calmed her  
2           down.

3   Q       So were you comfortable that the lady  
4           understood what you were asking and the lady  
5           was doing her level best to give you accurate,  
6           truthful information?

7   A       After I calmed her down, yes, sir.

8   Q       Which is when you got all this information,  
9           right?

10  A       Right.

11  Q       Including the description of the suspect, am I  
12           correct?

13  A       That's correct.

14  Q       Now, in your direct examination, you said on  
15           two points, height and the question of gloves,  
16           that, if I understood your testimony  
17           correctly, that she thought or she wasn't  
18           sure, words to that effect. Is that accurate,  
          sir?

          A       Well, referring to what, the height?

          Q       The height. You told us on direct examination  
22           when she said five foot seven, I believe you  
23           added that she said she thought about five  
24           foot seven but she said she really wasn't  
25           sure?

1 A Right, that's correct. What she meant was  
2 he could have been taller.

3 Q That's what she meant? Is that what she said?

4 A Because I indicated in the report that he  
5 was slim build, you know, so she meant he  
6 was taller (sic).

7 Q Now, I'm curious now. You also say she wasn't  
8 sure on the black leather gloves.

9 A No, I didn't say that; I said she gave me  
10 the information that he had on black  
11 leather gloves.

12 Q Didn't you tell us on direct examination that  
13 she said she wasn't sure?

14 A No, I don't recall about the black leather  
15 gloves. She told me he had black leather  
16 gloves.

17 Q Now, what about the slim build?

18 A She told me that he was slim build.

19 Q Any question about that?

20 A No, she said -- I asked her was he --

21 Q No, no, no, you didn't understand my question.  
22 When she said slim build, did she say, "I  
23 think," or, "I'm not sure," or, "He wasn't  
24 that heavy"?

25 A I was getting ready to answer that. I



1           gave her three choices, heavy, you know,  
2           heavy build --

3   Q     And what did she say?

4   A     -- thin build or slim build, and she said,  
5           "He was slim build."

6   Q     What about medium complexion?

7   A     She told me, "He was medium complexion."

8   Q     Any question or doubt about that?

9   A     The reason she seemed to be sure about  
10          that because she said he had --

11   Q     Do you understand my question?

12   A     She didn't have any doubt about the  
13          complexion.

14   Q     What about bad skin? Was she sure about that,  
15          not sure?

16   A     As far as an outstanding feature of his  
17          face, she told me he had bad skin when I  
18          asked --

19   Q     Black clothing, was she sure about that?

20   A     She was sure about the black clothing.

21   Q     Black Kangol hat, was she sure about that?

22   A     She was sure about that.

23   Q     Black leather jacket, was she sure about that?

24   A     She was sure about that.

25   Q     Red bandanna, was she sure about that?

1 A The information she gave me, she was sure  
2 about that.

3 Q Why is it then in the same listing all these  
4 things that she was sure of --

5 A Uh-huh.

6 Q -- you know that a height of a five foot seven  
7 inches without any sort of indicator that she  
8 was less sure of the height than she was of  
9 any of these other features? Wouldn't that be  
10 useful for a detective investigating this  
11 case, instead of going out and looking,  
12 limiting the search for suspects to a man five  
13 foot seven inches to have some kind of input  
14 that, "Hey, the height, she's not really sure.  
15 He might have been taller"? I mean why is it  
16 on this report that everything else she is  
17 sure of, but the height, according to your  
18 testimony here today, without any difference  
19 being made in the report you made, that's  
20 something she wasn't sure about, the guy could  
21 have been taller?

22 BY MR. BENSON:

23 Objection, Your Honor, the  
24 witness is incompetent to answer  
25 that question he's asking.

1 BY MR. KING:

2 No, he's not; he did the report.

3 BY MR. BENSON:

4 He's asking this officer to speculate as  
5 to why Ms. Williams may have said five seven.

6 BY THE COURT:

7 I don't believe that was the focus of it.  
8 I'll overrule it. Now, that was a long  
9 question.

10 Q Do you understand what he's asking you, Mr.  
11 Faulkner?

12 A I understand.

13 BY THE COURT:

14 You may answer.

15 BY THE WITNESS:

16 A This is the information she gave me is  
17 five seven, and I didn't indicate on that.

18 BY MR. KING:

19 Q What she told you was five seven?

20 A She told me five seven, correct.

21 Q That was her best. We're not saying that --

22 A It was her best.

23 Q We're not saying that, you know, she committed  
24 a crime by not being accurate. But what she  
25 told you was five seven?



1 A She told me five seven.

2 Q Now, the truth of the matter, my client  
3 happens to be five foot eleven inches. He  
4 doesn't fit five foot seven, am I correct,  
5 sir?

6 A That's correct.

7 BY MR. BENSON:

8 Objection, Your Honor. Counsel  
9 is testifying; there is no  
10 evidence of his client's height  
11 in the record.

12 BY THE COURT:

13 Sustained and order the answer stricken.

14 BY MR. KING:

15 Q Now, on the black leather gloves, is it your  
16 recollection that Ms. Williams at the time she  
17 gave that description to you indicated she was  
18 unsure?

19 A No, she didn't indicate anything as far as  
20 the black leather gloves.

21 Q Now, in addition, one of the things she told  
22 you about pertained to the gun that was put  
23 upon her by the person that did this to her,  
24 is that correct?

25 A Correct.

1 Q How did she describe the gun?

2 A She didn't give me a description of the  
3 gun except for a revolver.

4 Q A revolver?

5 A Uh-huh.

6 Q As opposed to an automatic?

7 BY MR. BENSON:

8 I'm going to object, Judge. Can  
9 we approach at this point,  
10 please?

11 BY THE COURT:

12 All right.

13  
14 WHEREUPON THE FOLLOWING DISCUSSION WAS  
15 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
16 THE JURY:

17

18 BY MR. BENSON:

19 I believe this goes outside of the scope  
20 of identification which I was prohibited from  
21 getting into. Now, the details of how this  
22 crime occurred and what instrumentality was  
23 used, I was prohibited from doing that.

24 BY MR. KING:

25 Well, I'm testing the efficacy of this

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MAY 23 1997

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*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

VANES 000875



1 officer's testimony that he accurately noted  
2 what she told him. I'm not saying that he's  
3 right and she's wrong.

4 BY THE COURT:

5 How does it square with Modisett what  
6 you're asking now? You're asking him --

7 BY MR. KING:

8 This would be a prior inconsistent  
9 statement; prior inconsistent statements are a  
10 different exception under Modisett.

11 BY THE COURT:

12 How so?

13 BY MR. KING:

14 I mean read Modisett; I mean it's laid out  
15 under Modisett.

16 BY THE COURT:

17 Well, there are three exceptions noted:  
18 prior sworn statements -- well, it was; she  
19 testified in court.

20 BY MR. BENSON:

21 Yes, but the statement he's questioning  
22 him about now was not sworn to.

23 BY THE COURT:

24 No, this was prior at the scene, which you  
25 objected to the State getting into.

1 BY MR. KING:

2 Yes, on a different basis.

3 BY THE COURT:

4 Well, I don't know how different it was.

5 You said it didn't fit any exception.

6 BY MR. KING:

7 And it was hearsay. I'm not offering it  
8 to prove the truth of the matter asserted that  
9 it was the gun.

10 BY THE COURT:

11 Mr. Benson just said the same thing.

12 BY MR. KING:

13 But he didn't.

14 BY MR. BENSON:

15 The point of it is.

16 BY MR. KING:

17 Well, he has answered the question already  
18 that she said revolver, so I'll withdraw the  
19 question.

20 BY THE COURT:

21 He's asking for it to be stricken I  
22 suppose.

23 BY MR. KING:

24 And I object to that.

25

1 BY THE COURT:

2 All right, I'll let it stand at this  
3 point.

4

5 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
6 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

7

8 BY MR. KING:

9 All right. No further --

10 Q Well, let me ask you this one other thing,  
11 Officer Faulkner: This night in this  
12 neighborhood on February 27th, 1992 -- I don't  
13 know if you were or not -- were you made aware  
14 that there were a number of reported robberies  
15 occurring in this section of Glen Park that  
16 night?

17 A Yes, I did.

18 Q Of a similar nature?

19 A That's correct.

20 Q Do you recall how many other robberies  
21 occurring in that section of Glen Park were  
22 reported as being perpetrated by the person  
23 fitting the description given to you by Ms.  
24 Williams were made that night?

25



1 BY MR. BENSON:

2 I would object, Your Honor. That  
3 calls for a response based on  
4 hearsay.

5 BY THE COURT:

6 Yes, I would limit it too, and advise the  
7 jury, that what he was told is not evidence in  
8 this trial, but I would permit him to answer  
9 as to what he was told, if he was.

10 BY THE WITNESS:

11 A I was told -- I think it was about four or  
12 five.

13 BY MR. KING:

14 Q Four or five?

15 A Right.

16 Q And similar-description perpetrator, am I  
17 correct, sir?

18 A That's correct.

19 Q Similar MO or modus operandi, is that correct,  
20 sir?

21 A That's correct.

22 Q And, again, similar neighborhood, within  
23 blocks of the other, is that correct, sir?

24 A That's correct.

25 Q And in terms of the time of night, within an

1 hour and a half, maybe two hours one of the  
2 other, is that correct, sir?

3 A I can't elaborate on the time; I'm not --

4 Q You didn't get that information?

5 A No.

6 Q Did you personally -- were you dispatched or  
7 otherwise involved yourself in the  
8 investigation of any of these other robberies  
9 that occurred that night, or was this the only  
10 one, the Rhonda Williams' incident, that you  
11 were involved in investigating?

12 A Well, I'm not sure if it was pertaining to  
13 this particular suspect, but I did take a  
14 robbery report earlier that evening.

15 Q From whom?

16 BY MR. BENSON:

17 I would object, Your Honor. Once  
18 again, we're going into evidence  
19 that is clearly hearsay; and  
20 unless that person is here and  
21 has testified, the answer is  
22 unacceptable.

23 BY THE COURT:

24 Well, as to the name -- I don't think the  
25 name -- we won't get into conversations, but



1 do you know a name?

2 BY THE WITNESS:

3 A No, sir, I wouldn't even know.

4 BY THE COURT:

5 All right.

6 BY MR. KING:

7 Q Let me ask you as best you recall if any of  
8 the following names ring a bell with you --  
9 and, again, we're referencing February 27th,  
10 approximately the same time, approximately the  
11 same neighborhood.

12 BY MR. BENSON:

13 I'll object, Your Honor. Counsel  
14 is talking about names, and there  
15 has been no evidence introduced,  
16 there is no relevancy at this  
17 point in the proceeding.

18 BY MR. KING:

19 Yes, there is.

20 BY THE COURT:

21 Well, he has answered questions about  
22 similar reports, so I would permit the name.

23 Overruled. Go ahead.

24 BY MR. KING:

25 Q How about a Sonya Cox?

1 A That name doesn't ring a bell.

2 Q Mary Banks?

3 A I know a Mary Banks; yes, I'm familiar  
4 with that incident.

5 Q You are?

6 A Yes, I am. As far as hearsay, I didn't,  
7 you know --

8 Q I'm sorry, what?

9 A As far as hearsay.

10 BY THE COURT:

11 So you're saying you didn't take that  
12 report?

13 BY THE WITNESS:

14 A No, sir, no; just as hearsay.

15 BY MR. KING:

16 Q What about Tisa Johnson?

17 A That name don't ring a bell.

18 Q What about Christina Cullum?

19 A That sounds familiar to me, that name.

20 Q All right, if there were a report with your  
21 name on it and her name on it, would that  
22 possibly refresh your recollection?

23 A Right.

24 Q Look at the top page of the seven documents  
25 I've just given you -- don't read it, just

1 look at it -- and tell me if your memory has  
2 been refreshed as to whether or not Christina  
3 Cullum is one of the victim of the similar  
4 offenses that you had occasion to talk to that  
5 evening.

6 BY MR. BENSON:

7 I would object, Your Honor. That  
8 calls for a legal conclusion,  
9 "the similar incidents." Counsel  
10 is attempting to testify by that  
11 comment.

12 BY MR. KING:

13 Well, I'm basing it on his testimony.

14 BY MR. BENSON:

15 It only calls for an answer that is  
16 hearsay based upon his conversations.

17 BY THE COURT:

18 I don't know if he could answer that  
19 without getting into hearsay at this point, so  
20 if you would, rephrase the question.

21 BY MR. KING:

22 Q Is your memory refreshed? Was Christina  
23 Cullum one of these victims that you talked to  
24 that night?

25 A Well, I documented this report, but this



1                   was -- this is 8:30 p.m. This is my  
2                   report.

3   Q   8:30 p.m. what date?

4   A           This is February 27th, 1992.

5   Q   An hour and a half before you were talking to  
6       Rhonda Williams, is that correct, sir?

7   A           That's correct.

8   Q   And, again, in all these other cases, the  
9       description of this perpetrator was the same,  
10      was it not?

11   A          Well, I can't say whether it was the same,  
12          but --

13   Q   What about with Ms. Cullum who you interviewed  
14      at 8:30? What description was given?

15   A          I see in this a description of a male  
16          black, slim build, medium complexion with  
17          a black Kangol cap on.

18   Q   What about the height, if you recall?

19   A          She said he was slim build.

20   Q   Height?

21   A          I didn't get a description of the height.

22   Q   I'll ask you again look at the same document  
23      under description of the suspect and see if  
24      that refreshes your memory as to whether or  
25      not you were given a description of the

1 height, sir.

2 A Okay, she said he was five seven.

3 Q Five feet seven inches?

4 A Yes, sir.

5 BY MR. BENSON:

6 Once again -- I've objected three  
7 times. Now, he's testifying as  
8 to what someone else said.

9 BY THE COURT:

10 You didn't reiterate the objection going  
11 through this report, but I would sustain it  
12 there and order that stricken.

13 BY MR. KING:

14 That's all I have.

15 REDIRECT EXAMINATION

16 BY

17 MR. BENSON

18 Q Officer, do you know how many robberies were  
19 committed in Gary that evening?

20 A I believe about four or five.

21 Q Do you if there were robberies on the west  
22 side, the north side, the south side?

23 A No, I was working the Glen Park area, only  
24 in my district.

25 Q You don't know how many other robberies were



1 committed that evening, do you?

2 A No, I can't say.

3 Q Now, you have been involved in apprehensions  
4 of suspects who you have received descriptions  
5 for, correct?

6 A That's correct.

7 Q Approximately how many times over the course  
8 of your fourteen-year career?

9 A Well, I'll say hundreds of times.

10 Q And how would you characterize the description  
11 that Rhonda Williams gave you from that man  
12 (indicating)?

13 A Well, we have to look at it like she was  
14 like laying on the floor and she had to  
15 look upward and he might have appeared to  
16 have been shorter than what he really was  
17 by her looking up and laying on the floor.

18 Q Based upon your experience, would you say that  
19 her description of this defendant was an  
20 accurate one?

21 A I would say it was an accurate  
22 description.

23 BY MR. BENSON:

24 Thank you very much.

25

1 || RECROSS-EXAMINATION

2 BY

3 MR. KING

4 Q The difference in height, you're excusing  
5 that, correct?

6 A No, I'm not excusing it; I was just saying  
7 she was lying on the floor, she was  
8 looking up at this particular person and  
9 he might have appeared to have been  
10 shorter than what she thought.

11 Q The description she gave to you, how many  
12 people -- and let's just limit it to people  
13 living in Gary --

14 | A | Uh-huh.

15 Q -- the description she gave you, how many  
16 people would that description be consistent  
17 with?

18 BY MR. BENSON:

19                                   Objection.  The witness is  
20                                   clearly incompetent to answer  
21                                   that question.

22 BY MR. KING:

23 Q How long have you lived in Gary?

24 | A Well, forty-one years.

25 Q All right, and how long have you been a

1 policeman?

2 BY THE COURT:

3 You're asking him what now?

4 BY MR. KING:

5 In his opinion, how many people would fit  
6 the description --

7 BY THE COURT:

8 Who live in Gary?

9 BY MR. KING:

10 Yeah, people in Gary who would fit the  
11 description.

12 BY THE COURT:

13 Well, considering what redirect has been  
14 and what cross has been, I would permit the  
15 question. You may answer if you can.

16 BY MR. KING:

17 Q Can you tell me?

18 A I wouldn't be able to answer that.

19 Q We're talking height, we're talking the  
20 complexion, we're talking the age range, we're  
21 talking the race, we're talking black  
22 clothing.

23 A Yeah, I wouldn't be able to answer that.

24 Q It's not a unique or unusual description, is  
25 it?



1 A No, it's not.

2 BY MR. KING:

3 That's all I have.

4 BY MR. BENSON:

5 No re redirect, Your Honor.

6 BY THE COURT:

7 That's all, sir.

8 BY MR. BENSON:

9 May we approach, please?

10

11 WHEREUPON THE FOLLOWING DISCUSSION WAS  
12 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
13 THE JURY:

14

15 BY MR. BENSON:

16 I would assume our next witness is going  
17 to take extremely long; I don't know what the  
18 Court wants to do.

19 BY THE COURT:

20 Who is it?

21 BY MR. BENSON:

22 Bruce Outlaw.

23 BY MR. KING:

24 What are you going to take long for on  
25 direct? You can do your direct in ten

1 minutes.

2 BY THE COURT:

3 It's awkward. We got off to a late start,  
4 it's 11:44, and --

5 BY MR. KING:

6 Why doesn't he do direct and we'll play it  
7 by ear then.

8 BY THE COURT:

9 Okay. Let's go to 12:30 and see what  
10 happens.

11

12 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
13 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

14

15 BY MR. BENSON:

16 The State would call Detective Bruce  
17 Outlaw to the stand.

18 OFFICER BRUCE OUTLAW,  
19 having been first duly sworn upon his oath,  
20 testifies as follows:

21 DIRECT EXAMINATION

22 BY

23 MR. BENSON

24 Q Would you please state your full name and  
25 spell it for the court reporter?



1 A Bruce Lloyd Outlaw, Senior, B-r-u-c-e  
2 L-l-o-y-d O-u-t-l-a-w, S-r, period.

3 Q Where are you employed?

4 A Gary Police Department.

5 Q How long have you been with the Gary Police  
6 Department?

7 A It will be eight years December 11th.

8 Q And what division do you work in?

9 A Investigative Division.

10 Q Commonly known as the Detective Bureau?

11 A Correct.

12 Q How long have you been in the Detective Bureau  
13 for?

14 A About two and a half years.

15 Q In the course of that time, how many  
16 investigations have you been involved in,  
17 approximately?

18 A Any specific type of investigation?

19 Q Homicides. Just a round number, if you can  
20 recall.

21 A Over twenty.

22 Q Robberies?

23 A Over a hundred.

24 Q I would like to direct your attention to late  
25 February of 1992 and ask you if you had

1 occasion to become involved in the  
2 investigation of the murder of a Bernard  
3 Jiminez and a robbery of Rhonda Williams?

4 A That's correct.

5 Q Would you please tell the ladies and gentlemen  
6 of the jury how you became involved in those  
7 two incidents?

8 A Okay, I was first involved with the  
9 investigation and the homicide of Bernard  
10 Jiminez some time in the latter part of  
11 February, possibly the 27th, 28th. I was  
12 on duty working the 4:00 to 12:00 shift in  
13 the Detective Division. I received a  
14 phone call stating that a shooting victim  
15 was at the 4500 block of Massachusetts;  
16 the exact address was supplied. And  
17 myself and other investigators proceeded  
18 to that location. We arrived at the  
19 prescribed location and were met by  
20 ambulance personnel along with patrol  
21 officers who were on the scene, and they  
22 somewhat gave me the preliminaries of the  
23 situation, which was the shooting victim  
24 had been shot at approximately 4580, 4560  
25 Massachusetts Street and he had ran

1 directly across the street where he  
2 succumbed on a neighbor's porch. The  
3 ambulance were called, and by the time I  
4 arrived, they were administering treatment  
5 to the victim in the ambulance. And by  
6 that time, I was advised by the personnel  
7 that his condition was critical and they  
8 would have to rush him immediately to the  
9 hospital. But I looked in the ambulance  
10 and noticed it was a male Latin being  
11 treated. And upon being notified of this  
12 hospital that they were taking him to, I  
13 proceeded to the supervisor on the scene  
14 of patrol and he advised me of more  
15 particulars of the case and directed me to  
16 possible witnesses to the crime.

17 Q And this was at Massachusetts Street?

18 A Right, about 4580 and the home directly  
19 across the street.

20 Q And this was the home of Bernard Jiminez?

21 A Right, Bernard Jiminez would have lived at  
22 somewhere around 4580, 4560, and where he  
23 succumbed would have been directly across  
24 the street.

25 Q I would like to show you a report and ask you



1 if this refreshes your memory as to the  
2 address where Mr. Jiminez resided?

3 A Yes, 4600; that would have been the 4600  
4 block of Mass. My mistake.

5 Q And did you have occasion to speak with any  
6 individuals?

7 A Yes.

8 Q What were their names?

9 A Okay, I spoke with Kim, Kimerly; and I  
10 spoke with a male black neighbor who lived  
11 further down the block, and I spoke with  
12 the residents, an adult female and a  
13 younger male who lived directly across the  
14 street from 4660 where the victim  
15 succumbed at.

16 Q Do you recall those people's names?

17 A Not exactly.

18 Q Is there any document that would refresh your  
19 memory as to their names?

20 A Yes.

21 Q I ask you to take a look at that document.

22 A Yes.

23 Q I ask you does that refresh your memory as to  
24 the names of the people that you spoke with  
25 that evening?

1 A Yes.

2 Q What were their names?

3 A I spoke with a Lorraine Hobson who lived  
4 at 4667 Massachusetts, and a Rodney Gray  
5 who lived at 4643 Mass, and also Kim  
6 Belinsky who lived at 4660 Mass.

7 Q Did you speak to Joseph Kirkwood?

8 A I'm not exactly sure if I spoke with him.

9 Q After speaking with those individuals, what  
10 did you do?

11 A Okay, upon that, I proceeded to the  
12 hospital which would have been Saint Mary  
13 Medical Center.

14 Q Where is that located?

15 A That's located at 540 Tyler Street in  
16 Gary. And I went to the hospital to get  
17 an update on the victim's condition.  
18 Okay, I arrived at the hospital and was  
19 met by hospital personnel who advised me  
20 that the victim had expired.

21 Q And after finding out that information, what  
22 did you do?

23 A Okay, I stayed at the hospital long enough  
24 to get preliminary information as far as  
25 the name of the victim and was -- met with



1 personnel from the coroner's office where  
2 they could do their investigation. And I  
3 left the hospital and went back to the  
4 scene of the crime.

5 Q What was your purpose of going back to the  
6 scene of the crime?

7 A To advise the units there that the case  
8 now, in fact, was a homicide, and I was  
9 going to make sure that any and all  
10 evidence that could possibly be recovered,  
11 that an attempt was made.

12 Q And upon returning to the scene, what did you  
13 do in that regard?

14 A Okay, I met with investigators from the  
15 crime lab and more or less directed them  
16 in the area where I wanted searched and  
17 processed for any and all evidence.

18 Q Had you spoke to anyone as to what area should  
19 be searched?

20 A Okay, I spoke with Kim.

21 Q Kim Belinsky?

22 A Kim Belinsky; she was pretty hysterical at  
23 the time. I was able to get an account of  
24 actually where the shooting occurred,  
25 which would have been around the porch

1 area directly in front of 4660.

2 Q I would like to show you what's been  
3 previously admitted into evidence as State's  
4 Exhibits 2 through 6 and ask you if this is  
5 the porch area that you're referring to -- and  
6 State's Exhibit 3.

7 A This area right in here (indicating).

8 Q Okay.

9 A This porch right here is the porch area  
10 (indicating).

11 Q And were you able to secure any evidence from  
12 that front partial area of the residence of  
13 Kim Belinsky?

14 A To the best of my recollection, no.

15 Q What were you looking for?

16 A We were looking for possible evidence of  
17 shell casings, anything that possibly  
18 could have been dropped by the victim or  
19 the perpetrator, anything that may appear  
20 out of the ordinary that might be relevant  
21 to the crime that occurred.

22 Q Were you able to find anything?

23 A No.

24 Q What did you do after you searched the area  
25 for any evidence?

1 A Okay, I stayed around long enough for the  
2 crime lab investigators to complete their  
3 investigation.

4 Q Were they searching with you also or in  
5 addition to?

6 A Okay, myself -- actually, the search and  
7 recovery was going to be done by the crime  
8 lab technicians; but basically my position  
9 was showing which area might be relevant  
10 to the case. So I would step back and  
11 say, "Let's check this area."

12 Q You were working with them?

13 A Right. And we proceeded across the  
14 street, checking the path leading across  
15 the street to the house where he succumbed  
16 at.

17 Q I would like to show you what's previously  
18 been admitted into evidence as State's  
19 Exhibits 9, 10 and 11 and ask you if you  
20 recognize that house? I ask you if this is  
21 the house that you searched for evidence?

22 A Okay, once the investigation was  
23 completed, I proceeded back to the police  
24 station.

25 Q And what happened once you returned back to



1 the Gary Police Department?

2 A Okay, when I got back, I made sure that  
3 the necessary reports were compiled, the  
4 office report stating what type of crime  
5 occurred versus the homicide digest, which  
6 was prepared by the first officer which  
7 would indicate who was there, who arrived,  
8 and some particulars that could have been  
9 obtained on the scene.

10 Q And was that done?

11 A Yes.

12 Q And approximately what time was this at now if  
13 you can recall?

14 A We're in practically -- if not after  
15 midnight, we're right about at midnight  
16 now.

17 Q Okay, after you got started on that, what did  
18 you do next?

19 A Okay, at that time, once all the reports  
20 were completed, we went back to the  
21 hospital and the coroner's office  
22 investigator was completed, went back and  
23 compiled our reports and got prepared to  
24 start back at it the next morning.

25 Q And what happened the next morning? What did

1 you do in relation to this case?

2 A Okay, the following day, possibly the  
3 morning or the afternoon shift, I got in  
4 contact with Kimerly and spoke with her on  
5 the phone, and she was still pretty  
6 distraught under the circumstances, and  
7 advised her once she gets herself somewhat  
8 together I would like to ask her a few  
9 things in reference to the investigation.

10 Q And did you do that?

11 A I did.

12 Q Did you ever ask her to attempt or make  
13 arrangements for her to attempt to identify  
14 who this person was that had killed her  
15 fiance?

16 A Yes.

17 Q How did that occur?

18 A Okay, sometime going into March, maybe  
19 around the 2nd, 3rd, the beginning of the  
20 month of March, I had instructed her to  
21 come down to the police station some time  
22 during the day-time shift to view  
23 photographs.

24 Q And is that you who actually shows her these  
25 photographs?

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354

MAY 23 1997

*Anna M. Anton*  
CLERK LAKE SUPERIOR COURT

885



1 A No.

2 Q Okay. And who does that?

3 A Okay, the photographs are kept in the Gary  
4 Police Department Bureau of Identification  
5 and --

6 Q How are they arranged?

7 A They are arranged in several large so-to-  
8 speak portfolios which hold several  
9 pictures in them.

10 Q Like binders?

11 A Binders, yes.

12 Q Do you know approximately how many pictures  
13 are in each of those binders? How many are on  
14 a page?

15 A Well, my last recollection of looking at  
16 the books that held the photographs, it  
17 must have been about eight on each page.

18 Q Okay, how many pages are in the book,  
19 approximately?

20 A Over thirty.

21 Q So would it be fair to say there's at least  
22 two hundred and forty pictures in each book?

23 A A pretty good approximation.

24 Q And did Ms. Belinsky, in fact, come down and  
25 look at those books?

1 A She did.

2 Q Do you know how many books she looked through?

3 A I'm not exactly sure.

4 Q And what, if anything, occurred after she came  
5 down to the police station and looked at those  
6 books?

7 A Okay, there came a time approximately  
8 March 2nd, March 3rd where I received a  
9 notice of correspondence from the Bureau  
10 of Identification directed to me  
11 indicating that Kim Belinsky had come in  
12 and, in fact, viewed the photographs and  
13 had a possible identification on the  
14 Bureau of Identification photographs which  
15 corresponded to the number that is  
16 assigned to each picture.

17 Q And what was the name of that picture?

18 A Okay, the number, I matched the number up  
19 and secured the picture, and the name that  
20 corresponded to the picture was Willie  
21 Donald.

22 Q And you also were involved in the  
23 investigation of a robbery that same evening,  
24 correct?

25 A Yes.

1 Q And it was a Rhonda Williams?

2 A That's correct.

3 Q And would it be fair to say that you did  
4 basically the same thing for the robbery as  
5 you did for the homicide up to this point in  
6 terms of gathering the reports?

7 A Okay, as far as the report gathering, yes.

8 Q And did Ms. Williams ever come down and  
9 basically do the same thing that Kim Belinsky  
10 did, look at these books?

11 A That's correct.

12 Q And was she able to indicate by looking at  
13 those books who had robbed her?

14 BY MR. KING:

15 Objection unless the State  
16 specifies whether or not that was  
17 done in the presence of this  
18 officer or if he's basing his  
19 testimony on reports made  
20 available to him as a detective  
21 on the case.

22 BY THE COURT:

23 Well, can we clarify that? I would  
24 sustain it at this point.

25



1 BY MR. BENSON:

2 Q Did you become aware through the reports  
3 whether or not Ms. Williams had indicated who  
4 her assailant was?

5 A Yes.

6 Q And who was that?

7 A Okay, I received the same correspondence  
8 stating that she had viewed photographs  
9 and which she made positive identification  
10 on the photograph that corresponded to the  
11 number on the report that was supplied to  
12 me. And the name that corresponded with  
13 that number was Willie Donald.

14 Q Now, once the defendant -- the picture had  
15 been identified in these books, what did you  
16 do after getting that information?

17 A Possibly -- my first step, of course, was  
18 to attempt to obtain any information about  
19 Mr. Donald that I could. And the  
20 following day -- well, the information I  
21 obtained would have been to see, you know,  
22 see if he was wanted for anything, such as  
23 that, and I was able to obtain a bench  
24 warrant through the Gary City Clerk's  
25 office.

1 Q Tell the ladies and gentlemen what a bench  
2 warrant is.

3 A A bench warrant is issued by a judge when  
4 an individual fails to appear in court on  
5 a prescribed date for whatever crime the  
6 incident was referring to, whether it be a  
7 misdemeanor, a felony or some type of  
8 infraction like a traffic ticket, failed  
9 to show up in court, and it's the judge's  
10 discretion to issue a bench warrant for  
11 failure to appear, which means upon  
12 commanding any officer to arrest this  
13 individual, he would have to go before the  
14 judge and explain why he failed to appear  
15 on a prescribed date.

16 Q And in conducting this search -- is that your  
17 routine practice when you have a suspect?

18 A Yes, I would check for wanted -- see if  
19 he's wanted for any particular situation.

20 Q And in this case, you did find that there was  
21 a warrant for the arrest of the defendant,  
22 correct?

23 A That's correct.

24 Q And once you find out that information, what  
25 do you do?



1 A Okay, the bench warrant itself is an  
2 arrest warrant. And the following day, I  
3 with other officers went to seek out Mr.  
4 Donald.

5 Q And where did you find him?

6 A I'm not sure of the exact address but,  
7 possibly, 3840 Connecticut, 3830.

8 Q I would like to show you a document and ask  
9 you if this refreshes your memory as to the  
10 address where you found the defendant?

11 A Yes.

12 Q And where was that?

13 A That would have been 3860 Connecticut  
14 Street in Gary.

15 Q And would it be fair to say that you were  
16 going there to arrest him on the bench  
17 warrant, but you had other suspicions,  
18 correct?

19 A That's correct.

20 Q And a search warrant is a vehicle by means  
21 that you can bring him into the station,  
22 right?

23 A Excuse me?

24 Q A search warrant is a vehicle -- I'm sorry,  
25 the arrest warrant is a vehicle by which you

1 can bring him into the station legally,  
2 correct?

3 A Correct.

4 Q And tell the ladies and gentlemen of the jury  
5 what happened when you arrived at 3860 --

6 A Connecticut. Okay, about between 5:30,  
7 6:00 o'clock on a particular day, myself  
8 and other investigators, along with three  
9 patrol uniform officers including the  
10 sergeant, we went to that address. Myself  
11 and Sergeant DeLeon went to the front  
12 door, I had the warrant in my possession,  
13 in my hand, we knocked on the door, we  
14 knocked again and --

15 Q Now, who was in uniform and who wasn't?

16 A Sergeant DeLeon was in uniform, he went to  
17 the front door with me; Officer Darrius  
18 Brannon was in full uniform; and I think  
19 Corporal Ben Portis was in full uniform;  
20 Corporal John Jelks was in plain clothes;  
21 Corporal Sherry Lee was in plain clothes;  
22 and myself, I was in plain clothes.

23 Q What is the purpose of taking a uniformed  
24 officer to the door with you?

25 A So there wouldn't be any discrepancy as

1 far as whether or not these are actually  
2 the police.

3 Q And you stated you knocked on the door,  
4 correct?

5 A Right.

6 Q What happened?

7 A We knocked on the door, and after a short  
8 period of time I noticed a male subject --  
9 I think it was the type of door with a  
10 little window with a curtain behind it. I  
11 noticed a male open the curtain and close  
12 it back up; he looked out, briefly looked  
13 out at myself and Sergeant Deleon who was  
14 standing in front of the door. He looked  
15 out and we knocked, we said, "Police," and  
16 no one answered the door. And then a  
17 short time later after we knocked again --  
18 because I could hear something going on  
19 behind the door but I wasn't exactly sure  
20 what it was, and we were getting a little  
21 uneasy. So then the male subject opened  
22 the door.

23 Q And who was the male subject?

24 A The male subject was Willie Donald.

25 Q And that's the same subject who looked through



1 the curtain and closed it earlier?

2 A As far as I can recollect, yes.

3 Q And how much time had elapsed from when you  
4 first knocked until the defendant answered the  
5 door?

6 A Ten minutes.

7 Q So you were waiting outside for the defendant,  
8 who had already seen you, to open the door?

9 A Yes.

10 Q And what did he do?

11 A After he opened the door, what happened --  
12 of course, I'm in plain clothes along with  
13 the uniform officer. I presented my  
14 identification and identified myself as a  
15 police officer. And I asked him, "Are you  
16 Willie Donald?" He said, "Yes." I said,  
17 "I have a warrant for your arrest," and I  
18 had it in my possession. He asked to see  
19 it; I showed it to him. And at that time,  
20 he was placed under arrest.

21 Q What was his demeanor?

22 A He was nervous; he was a little nervous.

23 Q And after you arrested the defendant, what did  
24 you do?

25 A Okay, Sergeant DeLeon who was in a marked

1 patrol unit --

2 Q Let me back up. I'm sorry to cut you off; I  
3 want to back up. At this time, who was  
4 present at the house when this arrest was  
5 executed?

6 A As far as officers are concerned?

7 Q No, anybody in the house.

8 A Okay, I recall a younger female who  
9 identified herself as a niece to Mr.  
10 Donald. I spoke with her and I gave her a  
11 telephone number where I could be  
12 contacted in reference to the arrest of  
13 Willie Donald and told her we were going  
14 to 1301 Broadway with him, and she said  
15 she would give it to his mother, Willie  
16 Donald's mother, to call. And one of the  
17 officers, possibly Sergeant DeLeon put the  
18 handcuffs on him and, you know, walked him  
19 outside to the car and we stopped outside  
20 at the car and I read Mr. Donald his  
21 rights, and he stated that he understood.  
22 And at that point --

23 BY THE COURT:

24 Counsel, could you approach the bench for  
25 a moment?



1 WHEREUPON THE FOLLOWING DISCUSSION WAS HELD AT  
2 THE BENCH OUTSIDE OF THE HEARING OF THE JURY:

3  
4 BY THE COURT:

5 I just wanted to interrupt at that point;  
6 I don't know what's coming. Was there any  
7 statement made?

8 BY MR. BENSON:

9 No, he didn't say anything. I'll just ask  
10 him another question to get away from this.

11 BY THE COURT:

12 So there is no statement?

13 BY MR. KING:

14 No. And also at the station, he requested  
15 an attorney; and this guy, this idiot, is  
16 capable of saying anything so you had be very  
17 careful about that or you'll have a mistrial.

18 BY MR. BENSON:

19 Well, I'm going to move past it.

20 BY THE COURT:

21 Yes, let's get away from this area of  
22 advising him of his rights and so forth.

23 BY MS. LAKE:

24 Could you also make a comment to the  
25 spectators?

1 BY MR. KING:

2 I have already gestured to them, and the  
3 Court can watch. It's my client's mom and his  
4 sister and, you know --

5 BY THE COURT:

6 Okay.

7  
8 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
9 ONCE AGAIN HELD IN THE HEARING OF THE JURY:

10  
11 BY MR. BENSON:

12 Q There came a point that the defendant was  
13 transferred back to the station, correct?

14 A Excuse me, Mr. Benson?

15 Q There came a point where the defendant was  
16 transported back to the station, right?

17 A Correct.

18 Q And let's back up a little bit. The defendant  
19 is at the station. Prior to going out and  
20 executing this outstanding warrant, you had  
21 taken a statement from Ms. Williams and Ms.  
22 Belinsky, correct?

23 A I can't recollect as far as exact dates  
24 are concerned.

25 Q Let's see if I can show you some documents and

see if that refreshes your memory. I would like to show you two documents and ask you if that refreshes your memory as to whether or not a statement was taken from Ms. Belinsky prior to you going out and arresting the defendant. Please check the dates on those two documents.

A Yes.

Q So you had taken a statement from Ms. Belinsky before you went out to arrest the defendant, correct?

A Correct.

Q And in regards to Ms. Williams, when was her statement taken in relation to this arrest?

A Her statement was taken later on that same day, that same night.

Q Other than arresting the defendant to execute the warrant, did you have another reason why you wanted the defendant?

A Yes.

Q What was that?

A It was an investigation reference the robbery of Rhonda Williams and the homicide of Bernard Jiminez.

Q And what was your intent once you had the



1 defendant in custody?

2 A My intent was to get the best possible  
3 identification, have the victims come in  
4 to view a physical line-up.

5 Q And did you, in fact, have that done?

6 A I did.

7 Q Tell the ladies and gentlemen of the jury how  
8 that process came about.

9 A Okay --

10 Q Let's back up. I'm sorry. You arrested the  
11 defendant in the evening hours of March 2nd,  
12 correct?

13 A Yes -- possibly the 3rd.

14 Q I'm sorry, March 3rd at 6:00 p.m., correct?

15 A Right.

16 Q And you conducted a search of the residence at  
17 a later time, didn't you?

18 A Yes.

19 Q Was the search conducted before or after you  
20 had the in-person line-up done?

21 A After.

22 Q So the order would have been the arrest, the  
23 in-person line-up and then the search,  
24 correct?

25 A Correct.

1 Q Tell the ladies and gentlemen of the jury how  
2 the line-up came to be after you arrested the  
3 defendant.

4 A Okay, once he was arrested and brought on  
5 station, I contacted Ms. Rhonda Williams,  
6 the robbery victim, and asked her to come  
7 in a view a line-up, a physical line-up;  
8 and I contacted Kimerly and asked her to  
9 come to view a physical line-up. They  
10 arrived at the station shortly thereafter.

11 BY MR. KING:

12 Could the defense please ask for a time  
13 reference if the witness is able to give us  
14 one?

15 BY THE COURT:

16 Yes, go ahead.

17 BY MR. BENSON:

18 Q Do you recall approximately what time Ms.  
19 Williams arrived and Ms. Belinsky at the  
20 station?

21 A Half an hour to an hour or less.

22 Q But in regards to what time it was, was it in  
23 the morning, afternoon, evening?

24 A Okay, it would have been afternoon. It  
25 could have been about an hour, hour and a



half. I think the time of the arrest was some time around 6:00; I think we may have started the actual line-up around 7:15, 7:30, somewhere in that area. It was about an hour.

Q That same evening?

A Right, that same evening. You know, it took time for them to arrive, and I had to meet with the jail warden to prepare for the line-up.

Q Tell the ladies and gentlemen of the jury what needs to be done when an in-person line-up is going to occur, what you have to do.

A Okay, preferably, you want to conduct a line-up with subjects similar in physical characteristics.

Q What is the purpose of that?

A So, therefore, it would be fair, trying to make it as fair as possible without, you know, characteristics outstanding so to speak. So I went upstairs and met with the jail warden and advised him of the situation to prepare for a physical line-up and if he could get together, preferably -- like I said, in most

1 instances, we like to use the guys who are  
2 already incarcerated as opposed to going  
3 out on the streets and say, "Let me find  
4 someone that looks like him." So we  
5 basically dealt with who we had in  
6 custody; and we got as close to the  
7 physical characteristics as we could.  
8 And, usually, it's six persons that are  
9 involved in a line-up, you know; that's  
10 the standard of operation that we use is  
11 six persons. There persons -- of course,  
12 I take down his height, weight and type of  
13 clothing he's wearing -- and each one is  
14 given a particular number because they're  
15 going to be positioned one through six.  
16 Each one -- we got together five other  
17 individuals, male blacks as close as we  
18 could, and each one was assigned a number.  
19 And we have a screen, two-way screen, in  
20 which the subjects of the line-up would  
21 stand behind the screen; but whomever is  
22 viewing it could see them but they can't  
23 see whoever is viewing it. It's like,  
24 that's how the line-up is --

25 Q Two-way mirror?



1 A Right. You can see the subject of the  
2 line-up but they can't see you. So we got  
3 together the other five individuals and we  
4 positioned them in the line-up. So the  
5 line-up in itself was set and, of course,  
6 you have to set your proper lighting to  
7 make sure that the subjects of the line-up  
8 cannot view out and see whomever is  
9 viewing it.

10 Q How does that happen?

11 A Okay, we have special lighting in the  
12 Detective Division that is positioned over  
13 the line-up area which is on the extreme  
14 end of the Detective Division. You would  
15 cut out all the lights in the exterior  
16 portion, and you have a little area -- I  
17 would give it roughly five by fifteen,  
18 five by seventeen; that would be a rough  
19 approximation -- which would be the line-  
20 up area with a certain light which would  
21 bring out the effect of the two-way.

22 Q So it's a room that's cut in half, one with a  
23 stage and the two-way mirror?

24 A Right, but it's not connected directly to  
25 the Detective Bureau, it's separate doors.

1                   So the line-up was prepared and everyone  
2                   is in position.

3       Q     In this case, did you do what you just  
4             described?

5       A     Yes.

6       Q     And how many people were in the line-up?

7       A     Six total.

8       Q     And the defendant was one of the people in the  
9             line-up, correct?

10      A     Correct.

11      Q     I'd like to show you what's previously been  
12             admitted into evidence as State's Exhibit 8  
13             and ask you if you recognize that photograph?

14      A     Yes.

15      Q     What is that a photograph of?

16      A     That's a photograph of the physical line-  
17             up that was conducted by myself.

18      Q     For Ms. Belinsky and Ms. Williams?

19      A     Correct.

20      Q     What is your purpose in taking a photograph of  
21             that line-up?

22      A     That would, of course, show an accurate  
23             recollection of what actually occurred.

24      Q     Did there come a time when you had Ms.  
25             Williams or Ms. Belinsky come in and look at

1           that line-up?

2           A           Yes.

3           Q           You called them and they came down to the  
4                       station, correct?

5           A           Correct.

6           Q           Did you take any steps to ensure that they  
7                       would remain separated when they were at the  
8                       station?

9           A           Yes.

10          Q           Tell the ladies and gentlemen of the jury why  
11                      you would do that.

12          A           Of course, you wouldn't want anything to  
13                      be prejudiced, whereupon one viewing  
14                      first, they go back and converse with the  
15                      other victim so we would show no form of  
16                      prejudice as far as the line-up was  
17                      concerned and who selected whomever. You  
18                      know, you didn't want anything like that  
19                      to come up.

20          Q           In this case, what did you do to secure that  
21                      independence?

22          A           Okay, we kept them separate outside of the  
23                      Detective Division, which is also outside  
24                      of the line-up area. And each one would  
25                      come in individually. And while they're



1 in the waiting area, you know, they were,  
2 of course, advised no one talks with no  
3 one; and an officer was positioned out  
4 there to ensure that that's what actually  
5 occurred.

6 Q And did there come a point where either Ms.  
7 Williams or Ms. Belinsky came into the line-up  
8 room to view these six individuals?

9 A Yes.

10 Q Do you recall which person came in first?

11 A I'm not exactly sure who came in first.

12 Q I would like to show you two documents and ask  
13 you -- well, show you one document first of  
14 all and ask you if that document helps you  
15 recollect at what time Ms. Belinsky viewed the  
16 in-person line-up?

17 A Yes.

18 Q And what time did Ms. Belinsky view that line-  
19 up?

20 A At 7:41 p.m.

21 Q And now I show you another document --

22 BY MR. KING:

23 Could the defense please have the date?

24 BY THE COURT:

25 Well, I thought we had established that

1 already.

2 BY MR. KING:

3 We might have, Judge, but I need to be  
4 sure.

5 BY THE COURT:

6 Would you ask so we're sure?

7 BY MR. BENSON:

8 Q All right, 7:41 p.m. on what day?

9 A March the 3rd, 1992.

10 Q And that's for Ms. Belinsky?

11 A Correct.

12 Q And I'd like to show you another document and  
13 ask you to turn to page three of that document  
14 and ask you if that helps you recall what time  
15 Ms. Williams looked at the in-person line-up?

16 A 7:30 p.m., March the 3rd, 1992.

17 Q That would have been approximately ten minutes  
18 before Ms. Belinsky did, correct?

19 A Correct.

20 Q Tell the ladies and gentlemen of the jury what  
21 you did when Ms. Williams was brought in to  
22 view the in-person line-up.

23 A I went and got her personally from the  
24 outer area, waiting area, and directed her  
25 into the darkened, of course, Detective

1 Bureau.

2 Q What was her demeanor?

3 A Okay, you walk down a little hallway first  
4 and then you make a right turn into the  
5 Detective Division and the line-up is  
6 about as far as you get to the back wall.  
7 And as we're walking up towards it, she  
8 said, "Wait a minute. Can they see me?"  
9 and I said, "No, they can't see you." She  
10 got a little nervous; she said, "Wait a  
11 minute," you know. I said, "You got to  
12 come sit right in the front," and she  
13 said, "No, they're going to see me." So  
14 she's like, "Wait, wait, wait," you know,  
15 and I said, "Come on. It's okay; nobody  
16 can't see you." And the officers, you  
17 know, who was up there, assured us that,  
18 "No one can see you." She was a little  
19 afraid about that at first, and once she  
20 got herself together, she came and sat in  
21 a chair that I had positioned -- I'd give  
22 it seven feet, ten feet in front of the  
23 actual screen, which is more or less  
24 elevated. She sat down and she's still a  
25 little nervous. I said, "Sit down," you



1 know, "and act only upon my instructions,"  
2 and I explained to her, "I have each  
3 subject of the line-up, which was six  
4 total, come out individually, they would  
5 step forward and turn each direction so  
6 she could get a left-side view and also a  
7 right-side view of each individual, that  
8 each individual would turn completely  
9 around where she can get an over-all view  
10 of them as far as from the back side and  
11 the front, then they would step back, and  
12 I would do it one through six, each  
13 individual.

14 Q Now, when you say, "come out," they're all  
15 standing there and they step forward, is that  
16 what you mean?

17 A That's correct.

18 Q You didn't bring them out one at a time, did  
19 you?

20 A No, but they're still in the little line-  
21 up area. They would step back from the  
22 wall so to speak.

23 Q So in relation to State's Exhibit 8, they  
24 would all be there and step forward from that  
25 position?

1 A Right, they're basically standing by the  
2 wall, which would show the approximate  
3 height of each individual, and they would  
4 step forward maybe just probably one step,  
5 you know, enough to step away from the  
6 group which would distinguish them more so  
7 as far as standing all together.

8 Q And did you have each one step forward?

9 A Each one individually, one through six.

10 Q And did anything happen when any of them  
11 stepped forward?

12 A Okay, each one stepped forward; and once  
13 the sixth person, the person, number six,  
14 had stepped back, I asked Ms. Rhonda  
15 Williams, "Do you recognize anyone?" and,  
16 you know, she pointed her finger, you  
17 know, shaking it like this (indicating),  
18 she said, "Number four."

19 Q Did you ask her anything else?

20 A She was sitting there and just staring,  
21 you know, for a little short period of  
22 time. I said, "Rhonda, Ms. Williams," you  
23 know, she was staring there for a while,  
24 and I said, "Are you sure?" She said she  
25 was sure.



1 Q Did she express any doubt to you whatsoever  
2 that number four was the person who robbed  
3 her?

4 A She held fast that she was sure it was  
5 number four.

6 Q After she identified the defendant as the  
7 person that had robbed her, what did you do?

8 A Okay, I escorted her from the little area  
9 that she was viewing the line-up back to  
10 the waiting area. And, of course, I  
11 documented the time it started versus the  
12 time it ended and her name and the  
13 indication of her identification.

14 Q And did you then conduct any more line-ups of  
15 these individuals with Ms. Belinsky?

16 A Yes.

17 Q And tell the ladies and the gentlemen here how  
18 that began.

19 A Okay, after Ms. Rhonda Williams was  
20 escorted back to the waiting area, I went  
21 back to get Kimerly Belinsky and brought  
22 her up. And she was even more nervous  
23 than Ms. Williams was, so I'm trying to  
24 console her and walk her up. She said  
25 that do she have to sit up in the front,

and I said, "Just sit up in the front,"  
and then basically the same, can they get  
to her and --

Q Was this when you were in there or walking in?

A As we're walking up to her seat, you know,  
we're walking up to where she is to be  
seated at; and she start crying then, you  
know, and I asked her would she be okay.  
She said, "Yeah," and she finally took her  
seat. And she started to point, and I  
said, "Wait a minute," and I explained to  
her --

Q What did she start to do?

A She started to point up at the line-up and  
I said, "Wait a minute."

Q This is before you even get in, correct?

A Right, I said, "We have to explain," you  
know, "the formality," you know, that  
basically, I call each one up where she  
would see each individual, all views of  
them, we would have them turn around and  
step back; and then, and then only, if she  
is able to make an identity was she to  
make it and remain silent, you know, until  
we complete the formality. So I went



1 through the formality and she's sitting  
2 there, she's crying, she's shaking in the  
3 chair, and once I complete the formality,  
4 she said, "Number four."

5 Q Did she give you any degree of certainty of  
6 how certain she was?

7 A (Indicating.) I had to stop though. She  
8 said she was getting sick and she had to  
9 go around the corner to the bathroom, and  
10 she was in there for a short period.

11 Q Did she do anything when she was in there?

12 A Yeah; she was throwing up.

13 Q This is after she pointed to the defendant in  
14 the line-up, correct?

15 A (Indicating.) So we got out her out the  
16 bathroom -- you know, we went in there to  
17 make sure she was okay -- and brought her  
18 out and sat her down. She was a little  
19 shook up. And I asked her once again,  
20 "Are you sure?" and she said she was sure,  
21 and I documented the information.

22 Q Both of these witnesses pointed out number  
23 four as the suspect who had robbed and  
24 murdered Bernard Jiminez and robbed Rhonda  
25 Williams, correct?

1 A Correct.

2 Q And number four was who in this line-up?

3 A Willie Donald.

4 Q And do you see Willie Donald in the courtroom

5 today?

6 A Yes, I do.

7 Q And where is he seated and what is he wearing?

8 A He's seated to the right of Mr. King; he's

9 wearing a light-colored shirt, multi-

10 colored tie and light-colored pants.

11 Q After Ms. Williams identified the defendant,

12 you took a statement from her, correct?

13 A That's correct.

14 Q And you also had occasion to show her another

15 photo line-up after this incident, is that

16 correct?

17 A Correct.

18 Q I'd like to show you what's been admitted into

19 evidence as State's Exhibit 17 and ask you to

20 take a look at that document and ask you if

21 you recognize it. Do you recognize that

22 document?

23 A Yes, I do.

24 Q And tell the ladies and gentlemen of the jury

25 what that is.



1 A This would be a six-picture photographic  
2 line-up that I had prepared.

3 Q And you showed that to Ms. Williams after the  
4 in-person line-up, correct?

5 A That's correct.

6 Q What was the reason behind showing her the  
7 photographic line-up after the in-person line-  
8 up?

9 A I was attempting to go through the  
10 channels to make sure that the  
11 identification was the best of her  
12 recollection as possible. And when she  
13 had originally picked the photograph, it  
14 wasn't more or less in a so-to-speak line-  
15 up form.

16 Q It was out of a book?

17 A Right, it was just in a book and it never,  
18 to the best of my recollection, was  
19 presented to her in the form of a line-up.  
20 And I did that just to be sure.

21 Q After Ms. Belinsky and Ms. Williams picked the  
22 defendant out of the line-up, did there come a  
23 point where you ever attempted to get a search  
24 warrant for the defendant's house?

25 A Yes.

384

MAY 23 1997

*Anna N. Antos*  
CLERK LAKE SUPERIOR COURT

915

VANES 000930



1 Q And do you recall when that occurred?

2 A Okay, myself and the other investigator  
3 upon completion of the line-up, the  
4 statement from Ms. Rhonda Williams, the  
5 statement completion from Ms. Belinsky,  
6 started preparing the line-up affidavit  
7 thing that same night in hope of possibly  
8 serving it then.

9 Q Getting a search warrant?

10 A Right, getting a search warrant then to --  
11 we were unsuccessful in locating a  
12 magistrate or judge who have to sign it  
13 authorizing us to search said premises.

14 Q You just can't go out and search, you have to  
15 have a judge sign that document, right?

16 A No, you have to have it signed by a judge  
17 or a presiding magistrate. That's the  
18 only way that, based on our -- it has to  
19 be accepted first of all, and the  
20 acceptance would be based on a judge or a  
21 magistrate; otherwise, it's invalid.

22 Q And in this case, you finally were able to  
23 obtain a judge's signature, correct?

24 A Not until the next morning.

25 Q Approximately what time?

1 A 10:00 a.m., 11:00 a.m.

2 Q After obtaining this signature, what did you

3 do with this search warrant?

4 A Okay, the following morning, 10:00

5 o'clock, 11:00 o'clock, earlier in the

6 day, we went to the prescribed location

7 for the search warrant, which would have

8 been 3860 Connecticut Street.

9 Q The defendant's residence?

10 A Correct.

11 Q Now, this was almost sixteen hours after he

12 had been arrested with someone else in the

13 house, correct? He was arrested at 6:00

14 o'clock the night before, correct?

15 A Correct.

16 Q And you're now going to search the house at

17 11:00 o'clock the next day, correct?

18 A Yes.

19 Q So about sixteen, seventeen hours had passed

20 with no surveillance on the house?

21 A Yes, that's a pretty good approximation.

22 Q Was there any surveillance on the house during

23 this interim period?

24 A If it was, I wasn't aware of it.

25 Q You would have been the one to authorize it,

1 correct? You were the investigating  
2 detective.

3 A Hopefully.

4 Q And when you went back with the search  
5 warrant, were you able to find any items that  
6 you were searching for?

7 A No.

8 Q What items were you looking for?

9 A So to speak "fruits of the crime,"  
10 anything -- first, I would look for  
11 anything that would directly relate the  
12 defendant to Ms. Rhonda Williams, anything  
13 that might relate the defendant to Bernard  
14 Jiminez and, of course, anything that  
15 would relate to the clothing description  
16 that was given to the officers of what the  
17 subject was wearing on the date of the  
18 crime.

19 Q And you weren't able to locate any of those  
20 items, were you?

21 A No.

22 Q Do you find that unusual considering that  
23 sixteen hours passed from the time the  
24 defendant was arrested with someone's  
25 knowledge to the time the house was searched?



1 A It was strange.

2 Q Would it be fair to say that the sooner the  
3 search warrant was executed, the better chance  
4 you would have of recovering any of the  
5 "fruits of the crime" as you refer to them,  
6 correct?

7 A General practice, you would like to serve  
8 it as soon as possible.

9 Q And, ideally, you would like to serve the  
10 warrant when he was arrested, correct?

11 A Correct.

12 Q But that was impossible given the  
13 circumstances?

14 A Correct.

15 BY THE COURT:

16 Do you have some more direct with this  
17 witness?

18 BY MR. BENSON:

19 Yes, Your Honor.

20 BY THE COURT:

21 Let's break at this point. Obviously,  
22 we're not going to complete direct and cross,  
23 and there's probably a great deal more  
24 questioning to be done of this particular  
25 witness, and it is nearly 12:40, so we'll

break for lunch at this point and again keep the jury together for lunch, escort them as a group to the cafeteria, and return. And we should resume the trial in one hour.

Let me admonish the ladies and gentlemen of the jury not to converse about this case in any manner while you're away from the courtroom at lunch. The jury may be excused.

WHEREUPON THE COURT RECESSED AND RECONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD IN THE PRESENCE AND HEARING OF THE JURY:

BY THE COURT:

Mr. Benson.

Q Detective Outlaw, when you were conducting this in-person line-up, you stated that you asked individuals to step forward in the line-up and turn to the left and turn to the right, is that correct?

A Correct.

Q When you asked them to step forward, did you refer to them by name or number?

A Number.

Q At any time during this process, did you



1       either indicate to Ms. Williams or Ms.  
2       Belinsky who they should pick?

3       A       No.

4       Q       Did you in any way suggest to them who the  
5       suspect might be?

6       A       No.

7       Q       Let's direct your attention to the robbery of  
8       Ms. Williams. You had occasion to review the  
9       offense report taken by Officer Faulkner, is  
10      that correct?

11      A       That's correct.

12      Q       And that's one of the reports you previously  
13      referred to?

14      A       That's correct.

15      Q       And in reviewing that report, were you made  
16      aware of whether or not the perpetrator was  
17      wearing gloves at that time?

18      A       I can't recollect whether that information  
19      was supplied.

20      Q       I'd like to show you what's previously been  
21      marked as State's Exhibit 21 and ask you if  
22      this refreshes your recollection?

23      A       Yes.

24      Q       And is State's Exhibit 21 what you reviewed  
25      from Officer Faulkner?

1 A That's correct.

2 Q And what did that report indicate to you as to  
3 whether or not that person was wearing gloves?

4 A The report indicated that the person was  
5 wearing black leather gloves.

6 Q And when you received that report indicating  
7 that the assailant had worn leather gloves,  
8 based upon that information, would you direct  
9 that fingerprints be taken at the crime scene  
10 based upon that information?

11 A No, I would not.

12 Q And why is that?

13 A Okay, with him wearing gloves, there would  
14 be the strong possibility there wouldn't  
15 be any prints there belonging to the  
16 suspect.

17 Q And in this case, did you order that  
18 fingerprints be taken?

19 A No, I did not.

20 Q And why was that?

21 A Okay, with the suspect allegedly wearing  
22 gloves, there more than likely wouldn't be  
23 any fingerprints there belonging to the  
24 suspect.

25 Q To the best of your recollection, were you

1 ever informed by anybody as to whether or not  
2 this perpetrator wore gloves or did not wear  
3 gloves other than the report that you reviewed  
4 from Officer Faulkner?

5 A No.

6 Q If you had been informed that the perpetrator  
7 did not wear gloves, would you have ordered  
8 fingerprints?

9 A I would have.

10 Q Now, this evening when this in-person line-up  
11 was conducted, that was March 3rd, correct?

12 A Correct.

13 Q There were other individuals who viewed that  
14 line-up, is that correct?

15 A That's correct.

16 Q And how did it come to pass that other  
17 individuals also looked at this in-person  
18 line-up with the defendant?

19 A Excuse me?

20 Q How did that occur that other people other  
21 than Rhonda Williams and Kim Belinsky viewed  
22 that line-up?

23 A Okay, on the night in question, on the 3rd  
24 -- excuse me, the 27th of February, there  
25 were two other robberies that occurred in



Glen Park area at somewhere pretty close to the same time frame but more so on the north a little -- maybe three to five blocks north --

Q Okay.

A -- and based on possibly these robberies could have been connected in the same chain, sequence of events, I asked the victims of the two other robberies to also come to the Gary police station to do the in-person line-up.

Q And do you recall where those robberies occurred at?

A Okay, the first robbery, which possibly occurred first, would have been at 39 -- in front of 3973 Virginia Street, the victim's name being Tisa Johnson. She was robbed as she got out of her automobile. And minutes later, there was an additional robbery from a person, Christine Cullum as she came out of the lounge on the corner of 39th Avenue and Tennessee. It may have been, the name of the lounge, maybe the Bamboo Lounge -- I'm not sure of the exact name -- but she was robbed as she came

1 out. And the time frame from the robbery  
2 at 3973 Virginia to the one that occurred  
3 on the corner as Christina was coming out  
4 of the Bamboo Lounge, we're talking about  
5 a fifteen-minute time span.

6 Q And the direction of the perpetrator in that  
7 case was in a northerly direction, correct?

8 A He would have been moving from 3973 going  
9 north to approximately 3901, which would  
10 have been the corner building.

11 Q About a block difference roughly?

12 A Block, three quarters of a block.

13 Q At the ends of the 3900 block, correct?

14 A Right.

15 Q And did you arrange to attempt to have Tisa  
16 Johnson come down and look at the in-person  
17 line-up which included the defendant?

18 A I called her, yes, I did.

19 Q And did she come down?

A She came after the completion of the in-  
person line-up; she was late.

Q And did you conduct anything to try and  
ascertain the identity of the perpetrator in  
that crime?

25 A Yes, I did.



1 Q What did you do?

2 A I presented to Ms. Tisa Johnson a  
3 photographic line-up, a six person.

4 Q And that would have been State's Exhibit 17?

5 A That's correct.

6 Q Before showing her that, did you ascertain  
7 whether or not she had indicated if she would  
8 be able to identify the perpetrator?

9 A Okay, she told me that during the course  
10 of the robbery there was a struggle and  
11 she got a good look at the perpetrator's  
12 face and she would be able to identify  
13 him.

14 Q And in talking with you, she never indicated  
15 that the perpetrator had bad skin, is that  
16 correct?

17 A No, she didn't.

18 Q And she looked at those photographs, correct?

19 A Correct.

0 Q Was she able to identify anybody?

1 A She looked at the photographs and she  
2 advised me that the person that robbed her  
3 wasn't amongst the pictures.

4 Q And that's the robbery at 3973?

5 A 3973 Virginia Street right in front as she

1 got out of her car.

2 Q Now, let's talk about the robbery that was a  
3 little farther north. That occurred shortly  
4 after this robbery of Tisa Johnson, correct?

5 A Correct.

6 Q And that was who?

7 A Christina McCullum if I may be correct  
8 (sic).

9 Q And was she able to give you a description of  
10 the perpetrator in that robbery?

11 A Yes.

12 Q And in the course of the description, did she  
13 ever indicate whether or not the perpetrator  
14 had bad skin?

15 A She made no mention of that fact.

16 Q And did you, in fact, show her the in-person  
17 line-up, physical line-up?

18 A Yes. If I'm not mistaken, Christina did  
19 do the line-up.

20 Q And was she able to identify the perpetrator?

21 A She viewed the line-up and said the person  
22 that robbed her wasn't amongst the  
23 subjects in the line-up.

24 Q Now, there was another crime too, a Gary  
25 police officer and her daughter, correct?

1 A This is correct.

2 Q And that occurred shortly after the murder of  
3 Bernard Jiminez, correct?

4 A Yes, somewhere in that time frame.

5 Q And did you have occasion to talk to that  
6 person?

7 A Yes.

8 Q And who was that

9 A The victim would have been Sonya, who is  
10 the daughter of Mary Banks.

11 Q In speaking with her, did she indicate to you  
12 whether or not she got a good look of this  
13 perpetrator?

14 A She told me that she really didn't get a  
15 good look at him.

16 Q In spite of that information, did you still  
17 conduct an in-person line-up and let her view  
18 the line-up which included the defendant?

19 A Yes, I asked her to come down.

20 Q And why would you do that if a person told you  
21 they couldn't recognize him to begin with?

22 A Okay, based on the robbery of Rhonda  
23 Williams leading up to the homicide of  
24 Bernard Jiminez, it appeared that the  
25 pattern was going south. And, also, Mary



1 Banks had made mention that she noticed  
2 something, the perpetrator may have had  
3 bad skin. And the clothing description  
4 was similar to the clothing description  
5 given by Rhonda Williams and Kimerly  
6 Belinsky.

7 Q And the description of the complexion was also  
8 similar, is that correct?

9 A Correct.

10 Q And that description was different from  
11 Christina Cullum and Tisa Johnson, the  
12 robberies north of the Jiminez residence,  
13 correct?

14 A That's correct.

15 Q And Ms. Banks or Ms. Thomas, were they able to  
16 identify who was in that line-up as the  
17 perpetrator?

18 A No, they were not.

19 Q Did that surprise you?

20 BY MR. KING:

21 Objection. Whether he's  
22 surprised or not is irrelevant.

23 BY THE COURT:

24 Sustained.  
25

1 BY MR. BENSON:

2 Q Would you find that unusual in light of the  
3 fact that she said she didn't get a very good  
4 look at him?

5 BY MR. KING:

6 Objection. That's irrelevant  
7 what he finds unusual. He's here  
8 to tell us what happened.

9 BY THE COURT:

10 Well, perhaps with some foundation. I  
11 would at this point sustain it.

12 BY MR. BENSON:

13 Q You had a conversation with Ms. Banks before  
14 this line-up, correct? You just didn't drag  
15 her in the room and say, "Look at these  
16 people," did you?

17 A No, I didn't.

18 Q What conversation did you have with her, about  
19 what?

20 A Okay, I asked, of course, what happened  
21 during the incident and did she get a good  
22 look at him where she could possibly  
23 identify him.

24 Q What did she say?

25 A She said, well, she's not sure.



1 Q Did she indicate to you whether or not there  
2 was any lighting in the area where she saw  
3 him?

4 A She said when she got out of her  
5 automobile that's when the robbery  
6 occurred and her porch light wasn't on.

7 Q Was or was not?

8 A Was not.

9 Q At any time during the in-person line-up which  
10 included the defendant, did she tell you that  
11 that person was not in the line-up?

12 A She still based her account on she wasn't  
13 sure, you know; she wasn't sure.

14 Q So she did not exclude the defendant at that  
15 time as a suspect, correct?

16 A Excuse me?

17 Q She did not -- during the course of that line-  
18 up, she did not exclude the defendant as a  
possible suspect, she merely did not confirm  
it?

A That's correct, she couldn't recognize  
him.

23 Q Now, you have been a detective for how long?

24 A About two and a half years.

25 Q And you investigated cases in which a criminal

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331

*Russa M. Anton*  
CLERK LAKE SUPERIOR COURT

VANES 000946

1 defendant commits more than one crime on an  
2 evening, correct?

3 A Unfortunately, yes.

4 Q Based upon your observations of the five  
5 crimes that occurred, the two on Virginia  
6 Street heading in a northerly direction, and  
7 the three on Connecticut and Massachusetts  
8 heading in a southerly direction, is it your  
9 opinion that one or two different individuals  
10 committed those groups of crimes?

11 A Two different.

12 Q What do you base that on?

13 A First of all, with the crimes occurring at  
14 3973 Virginia, Ms. Johnson, and with  
15 Christina at the corner of 39th and  
16 Virginia, the outstanding characteristic,  
17 possibly the bad skin, was not prevalent  
18 in that situation. Also, it appears that  
19 the perpetrator is heading in a northerly  
20 direction away, and on the other end, it  
21 appears that the pattern possibly would  
22 have started at 4409 Connecticut with Ms.  
23 Rhonda Williams and proceeded south.  
24 We're talking about from 43rd and  
25 Connecticut to 46th and Massachusetts,



about three and a half blocks. From there, it proceeded maybe about a block and a half further south to 48th and Pennsylvania, and we could be talking about a time span of twenty to thirty-five, forty minutes.

Q What was the consistent identifying factor in the description of the perpetrator's face in that situation?

A Okay, the consistent characteristic was the bad skin.

Q And that was absent the description of the other two robbers, correct?

A And that was absent in the description of the other two robberies, correct?

A They made no mention to me about it.

Q In attempting to ascertain the search warrant in which you searched the defendant's house, you used all this information you were gathering about any of these crimes to conduct that search, is that correct?

A That's correct.

Q And where was the defendant's house located in reference to all these crimes?

A The defendant's house would have been 38th

and Connecticut, 3860 possibility (sic) --  
 3860 Connecticut; that would have been  
 north. We're talking about from 3800 to  
 the robbery of Rhonda Williams, which is  
 the 4400 block, so we're talking about six  
 blocks north of the one that's on the  
 extreme north of this little situation.

Q The farthest these crimes occurred away from  
 the defendant's residence was six blocks,  
 correct?

A The closest to the defendant's residence,  
 which would have been Ms. Rhonda Williams,  
 was six blocks, the closest. And the  
 farthest being the one on 48th and  
 Pennsylvania, which we're talking about  
 ten blocks south and about two blocks  
 east, so we're talking about roughly  
 twelve blocks.

Q When you had the search warrant, you listed  
 the numerous items that you were looking for,  
 correct?

A Correct.

Q And those were the clothing items, correct?

A Correct.

Q Any guns?

1 A Of course, a weapon, yes.

2 Q And any of the items taken from any of the  
3 victims in these five crimes, correct?

4 A Correct.

5 Q And isn't it true that you were also looking  
6 for a pair of gloves, and that item was  
7 enumerated in the search warrant also,  
8 correct?

9 A Correct.

10 Q And that would be consistent with the  
11 description that Rhonda Williams gave you of  
12 what the assailant was wearing?

13 A Correct.

14 BY MR. BENSON:

15 One moment, please. I have no further  
16 questions, Judge. Thank you. Pass.

17 BY MR. KING:

18 Judge, I'm going to require use of the  
19 blackboard at some point in my cross. If the  
State could remove the documents they put up  
there, it would be appreciated.

20 BY THE COURT:

23 All right.

24

25



CROSS-EXAMINATION

BY

MR. KING

Q Let me start with this, Detective: From the time you first began to investigate these crimes up to and including today, did you come up with one shred of physical evidence whatsoever linking my client with these crimes?

A No, I haven't.

Q No, you haven't. Is that your answer, sir?

A That's correct.

Q Now, you told this jury that you didn't check for any fingerprints because of the report by Rhonda Williams to Officer Faulkner that the perpetrator was wearing gloves. Was that your testimony, sir?

A That's correct.

Q Now, do you admit or deny that in your first in-person meeting with Rhonda Williams that she specifically told you that at that time that, indeed, she had been mistaken and that the man that robbed her did not wear gloves?

A I never had such conversation with her.

Q She never told you that, is that your

1 testimony?

2 A To the best of my recollection, that was  
3 never mentioned to me.

4 Q Now, based upon the description that Rhonda  
5 Williams gave you of how this perpetrator went  
6 through her house, every room in the house  
7 virtually, and handled glasses and furniture  
8 and dresser tops and went through drawers and  
9 went through her purse and the belongings in  
10 that purse, would you agree with me, sir, in  
11 your experience as a detective, that if the  
12 perpetrator was not wearing gloves, you had a  
13 good likelihood to recover fingerprints of the  
14 person that committed this crime?

15 A It's a possibility, yes.

16 Q A possibility? Certainly a possibility worth  
17 exploring for a police detective, am I  
18 correct, sir?

A That's correct.

Q Was it ever pursued?

A No, based on information about the gloves.

22 Q Well, sir, did somebody tell you before your  
23 arrival here in court today that Rhonda says  
24 the guy wasn't wearing gloves?

25 A That information has never been passed on

1 to me. i

2 Q Even to this minute?

3 A Exactly.

4 Q Now, as I understand your testimony here today  
5 you are telling this jury that there's no way  
6 one guy committed the robbery of Rhonda  
7 Williams, the robbery and homicide of Mr.  
8 Jiminez, the robbery of Christina Cullom, the  
9 robbery of Tisa Johnson and the robbery of  
10 Mary Banks along with her daughter, Sonya  
11 Thomas. Was I correct in understanding that  
12 to be your testimony, sir?

13 BY MR. BENSON:

14 I would object, Your Honor.  
15 Counsel is misquoting the  
16 witness; the witness gave his  
17 opinion and he did not use the  
18 term "no way."

BY THE COURT:

Those were not his words, that's correct.

BY MR. KING:

22 Q Is it your opinion that one person did not  
23 commit all the crimes I just recited to you?

24 A In my opinion, yes.

25 Q All right. And as I understand your opinion,



1 the two factors for that decision are  
2 different directions and the fact that some of  
3 the witnesses didn't say something about bad  
4 skin. Is that correct? Those are the two  
5 reasons for your opinion?

6 A Those were the only two reasons that were  
7 addressed.

8 Q Were those your reasons, sir?

9 A I base it upon some other analogies.

10 Q Well, let's start with -- let's start with  
11 times. Were all of the times that all of  
12 these different robberies committed -- was it  
13 possible for one person, based on the time, to  
14 have committed every one of these offenses?

15 BY MR. BENSON:

16 Objection, that's speculation,  
17 Your Honor.

18 BY MR. KING:

19 Well, that same speculation he engages in,  
20 he gave his opinion the other way.

21 BY THE COURT:

22 Yes, considering the fact that an opinion  
23 was given, I think it can be challenged.

24 Overruled.  
25

1 BY MR. KING:

2 Q Do you recall my question?

3 A No.

4 BY THE COURT:

5 Repeat, please.

6 BY MR. KING:

7 Q Based upon the time reported to you by the  
8 victims of these various crimes, is it your  
9 testimony that it could not have been  
10 committed by one person?

11 A Okay, that's still --

12 Q Yes or no.

13 A -- opinionated, my opinion.

14 BY MR. BENSON:

15 Let the witness explain his answer.

16 BY THE COURT:

17 I think he can explain his answer. Go  
18 ahead.

19 BY THE WITNESS:

A Like I said, that is basically  
opinionated. My opinion, I couldn't --

20 BY MR. KING:

21 Q You just gave an opinion when the prosecutor  
22 asked you.

23 A Okay, as far as the time is concerned --  
24  
25



1 Q Do you know what times were reported?

2 A See, we have nothing to say that this  
3 particular time where this victim say this  
4 occurred (sic) Well, her clock may have  
5 been ten minutes fast versus this. We  
6 have nothing, you know, authentic to say  
7 that each time was consistent with each  
8 other. So I really couldn't base it upon  
9 that.

10 Q Well, did you ever look at the times these  
11 people said it happened?

12 A Okay, for example, when Chris --

13 Q Do you understand my question?

14 A I really couldn't base it upon the time  
15 because --

16 Q The question is: Did you ever look and see  
17 what time all these different people said  
18 these crimes happened? Did you ever look?

19 A Right, yes, I did.

20 Q Did you?

21 A Yes, I did.

22 Q Having looked at the times, was there any one  
23 time from all these reports that would have  
24 made it impossible for one person to have  
25 committed all these offenses? Yes or no.

1 A There was an effect that would make it  
2 impossible.

3 Q All right. Now, as I understand it, what  
4 we're talking about here is Christina Cullom,  
5 Tisa Johnson, Sonya Thomas and Mary Banks at  
6 the same time, mother and daughter, and, of  
7 course, the Rhonda Williams and the Bernard  
8 Jiminez and Kim Belinsky. Now, what I'm going  
9 to do, sir, is put before you a series of  
10 documents I have been provided. Now, what I  
11 want you to do -- Tisa Johnson, what time did  
12 she report she was robbed?

13 A 8:20 p.m., February 27th, 1992.

14 Q The time again, sir?

15 A That would be 8:20 p.m., February 27th of  
16 '92.

17 Q Well, so the fact of the matter is every one  
18 of these was February 27th, correct?

19 A Correct.

20 Q And the location reported, sir?

21 A 3973 Virginia.

22 Q Now, what is the next incident in time that  
23 was reported?

24 A It would have been Christina Cullum.

25 Q Time?

1 A 8:30 p.m.  
2 Q Location?  
3 A Corner of 39th -- 3901 Virginia on the  
4 corner.  
5 Q The next one in time?  
6 A Rhonda Williams, 9:00 p.m.  
7 Q Location?  
8 A 4409 Connecticut.  
9 Q Next one?  
10 A Bernard Jiminez.  
11 Q Time?  
12 A 9:15 p.m.  
13 Q Location?  
14 A 4660 Massachusetts.  
15 Q Next?  
16 A Sonya Thomas and Mary Banks.  
17 Q Time?  
18 A 9:20 p.m.  
19 Q Address?  
20 A 4821 Pennsylvania.  
21 Q Now, first of all, on your theory of your  
22 different directions, the fact of the matter  
23 is that just taking these in chronological  
24 sequence as reported to the police -- which is  
25 all you had to go on, am I correct?



1 A Yes.

2 Q From 3973, we would move north to 3901  
3 Virginia, am I correct?

4 A Correct.

5 Q Basically the length of a city block, am I  
6 correct?

7 A Correct.

8 Q Then we would move south to 4409 Connecticut,  
9 am I correct?

10 A Correct.

11 Q And Connecticut runs the same direction as  
12 Virginia, does it not, north and south?

13 A I'm not sure. It may have been a one-way  
14 or not; I'm not sure that's a one-way  
15 street.

16 Q No, I'm not asking what way. The same  
17 direction?

18 A Oh, yeah, north and south, yes.

19 Q All right. How many streets over from  
20 Virginia is Connecticut?

21 A Going from Virginia, going west, you would  
22 have Delaware, Pennsylvania, then  
23 Connecticut would be the third block west  
24 of Virginia.

25 Q All right. And in Gary, and in that section

1 of Gary , it's pretty much laid out as a grid  
2 pattern, and the blocks as they head east and  
3 west are shorter than the blocks are north and  
4 south, am I correct?

5 A Okay, yes.

6 Q All right. So according to your testimony,  
7 we're three short blocks over to Connecticut  
8 and five blocks south of the 3900 block, am I  
9 correct?

10 A Correct.

11 Q Now, first of all, would you agree that a  
12 person, even on foot, within the span of a  
13 half an hour or, frankly, even the span of  
14 fifteen minutes, could walk or run from the  
15 3900 block of Virginia to the 4400 block of  
16 Connecticut?

17 A As relating to the robberies?

18 Q No. Can a person make it from point A to  
19 point B within that time span?

20 A Yes, it's possible.

21 Q Now, having made it to 4409 Connecticut, we  
22 would then move over how many blocks from  
23 Connecticut to Massachusetts?

24 A Massachusetts would be the first block  
25 west of Connecticut.



1 Q All right. So we only have one short block  
2 over to Massachusetts, and we have two blocks  
3 south of the 4400 block, am I correct?

4 A Correct.

5 Q And would you agree with me that using these  
6 times, which is what you had to work with, a  
7 person can make it from that point to that  
8 point (indicating)?

9 A Just walking?

10 Q Yeah.

11 A After the commission of a crime?

12 Q Well, now --

13 A Which one?

14 Q From here to here (indicating).

15 A Okay, Mr. King, I don't understand. Are  
16 you saying if a person was --

17 Q Could a person --

18 A -- just, in fact, nothing relating to  
19 crime, could he just leave point A to  
20 point B?

21 Q Anybody. If I was visiting a friend at this  
22 address and didn't have my car --

23 A Okay.

24 Q -- could I walk from there to here  
25 (indicating) in the span of fifteen minutes?

1 A Yes.

2 Q You do realize it is the State's theory, at  
3 least in this case, that the same person did  
4 commit these two offenses? Are you aware of  
5 that?

6 A Yes.

7 Q Now, to go from 4660 Massachusetts to 4821  
8 Pennsylvania, how many blocks away from  
9 Massachusetts is Pennsylvania?

10 A Connecticut -- we're talking about the  
11 second block east of Massachusetts and two  
12 blocks south.

13 Q Two short blocks to the east, according to  
14 your testimony, and two blocks south, am I  
15 correct?

16 A Correct.

17 Q All right. Now, is it your opinion that one  
18 person robbed these two people and a different  
19 person robbed these three people -- four  
20 people, actually?

21 A That's not what I said.

22 Q Is it your opinion that whoever robbed these  
23 two people did not rob these people  
24 (indicating)?

25 A No.

1 Q Is it your opinion that one person could,  
2 indeed, have robbed every one of these people?

3 A No.

4 Q You're eliminating then -- so it's possible  
5 somebody could rob these people but the same  
6 person couldn't have robbed these people  
7 (indicating)?

8 A In my opinion.

9 Q Okay. So there's something different about  
10 these two than this group?

11 A Yes.

12 Q All right. And was that the description  
13 given?

14 A No -- that was a portion of it.

15 Q Was it the distance involved? Because you  
16 have already told us you can make it from  
17 these points to each other to this point  
18 within the time.

19 A Yes.

20 Q So the time is not a factor, is it, based on  
21 your earlier testimony?

22 A We have to look at the extenuating  
23 circumstances of the crime, Mr. King.

24 Q Let's look at the extenuating circumstance of  
25 what you have already testified to, which is a



1 person can go from here to here within this  
2 time frame, is that correct?

3 A That's -- on that question, Mr. King, just  
4 leaving the house -- and we're talking  
5 about someone who is not being pursued by  
6 the police or a victim.

7 Q Well, do you have any evidence whatsoever,  
8 any, that anybody was being pursued by the  
9 police as of 9:00 o'clock p.m.?

10 A That, I couldn't answer, Mr. King.

11 Q Look at your reports.

12 A Okay. For example --

13 Q Christina Cullum --

14 A Okay.

15 Q -- while she reported that it occurred at 8:30  
16 p.m., or while she said that it happened at  
17 8:30 p.m., what time did she report it to the  
18 police?

19 A 9:05 p.m.

20 Q 9:05 p.m., five minutes after the time on  
21 Rhonda Williams, is that correct?

22 A That's correct.

23 Q Tisa Johnson said it occurred at 8:20. And  
24 what time was it reported?

25 A It was reported at 8:30.

1 Q Now, being reported, does that mean that it is  
2 called in and a car dispatched to talk to her?

3 A Correct.

4 Q All right. Now, earlier you told the jury  
5 that you noted, if I understood your testimony  
6 correctly, you noted significant differences  
7 in the descriptions given by these various  
8 people. Did I understand you correctly?

9 A That's correct.

10 Q Do you have your own copies of these reports  
11 so you can follow along?

12 A Which one are you referring to?

13 Q All the ones that we just went through.

14 A Okay.

15 Q Let's turn first to Tisa Johnson. Would you  
16 agree with me that Tisa Johnson at 8:30 p.m.  
17 on February 27th, 1992 reported to an officer  
18 of the Gary Police Department that the person  
19 that robbed her was a male black in his mid  
20 twenties?

21 A Correct.

22 Q I'm going to use the initials T.J., male  
23 black, mid twenties. She described the height  
24 as six feet?

25 A Correct.



1 Q Thin build, am I correct?

2 A Correct.

3 Q A black skull cap. All right, what is that  
4 next two words there?

5 BY MR. BENSON:

6 At this time, I'll object.

7 Perhaps it's best to just put  
8 these reports into evidence since  
9 they have the description, which  
10 is being written now by counsel.

11 BY MR. KING:

12 Well, yeah, we could do that without too  
13 much of a problem, but I am going to, for  
14 demonstrative purposes, let him go through  
15 this anyway.

16 BY THE COURT:

17 I think you have a right to use  
18 demonstrative aids in court diagrams and  
19 writing it out and so forth, either side does.  
20 You may do so.

21 BY MR. BENSON:

22 Are questions being posed to Mr. Outlaw?

23 BY MR. KING:

24 Yes, counsel.

25 Q After black skull cap, there's a word "dark"

1 and it looks like s-k-i.

2 A Dark skin.

3 Q Dark skin, okay. Then we have black coat, am  
4 I correct?

5 A Correct.

6 Q Blue jeans. Then we also have reference made  
7 to a blue steel revolver, correct?

8 A Correct.

9 Q Now, if memory serves me, Christina Cullum was  
10 the next one in time. Follow along again,  
11 sir, if you would.

12 A Okay.

13 Q Ms. Cullum's description, Christina Cullum's  
14 description, again, a male black, slim.

15 BY MR. BENSON:

16 Judge, I'm going to object at  
17 this point. Counsel has not  
18 posed a question. He's writing  
19 things on that paper. Is that  
20 counsel testifying?

21 BY MR. KING:

22 Well, I have the witness sitting here  
23 reading along with me to demonstrate I'm not  
24 making this up off of documents given me by  
25 the State. And I think it's appropriate.

1 BY MR. BENSON:

2 I'm sorry, I didn't hear a question.

3 BY THE COURT:

4 Well, from time to time, he is questioning  
5 the witness as to whether or not this is all  
6 what is on the reports.

7 BY MR. BENSON:

8 The State doesn't take issue with the  
9 reports. We'll stipulate that those were the  
10 reports that were used in these incidents.

11 BY THE COURT:

12 Well, it takes two to stipulate if you  
13 wish to do it this way, counsel.

14 BY MR. KING:

15 I'm just trying to point out as quickly as  
16 I can what these descriptions are.

17 Q What description was given of the complexion  
18 of the person by Ms. Cullum?

19 A Medium.

20 Q Now, did you take that as a description of the  
21 relative shade of the perpetrator's skin  
22 coloration?

23 A Yes.

24 Q You know, light, dark or medium, that sort of  
25 thing?



1 A Yes.

2 Q Okay. Then she described a mustache, am I

3 correct?

4 A That's correct.

5 Q Black clothing?

6 A Correct.

7 Q And a black Kangol hat?

8 A Correct.

9 Q And that's what she told us except for the

10 height. What height did she give us?

11 A Right there all by itself.

12 Q All right, five seven.

13 A Five foot seven inches.

14 Q Now, the next one in time was Ms. Rhonda

15 Williams, am I correct, sir?

16 A Correct.

17 Q She described a male black, is that correct,

18 sir?

19 A Correct.

20 Q She described the slim build, is that correct?

21 A Correct.

22 Q She described a medium complexion, is that

23 correct?

24 A Correct.

25 Q She described bad skin, is that correct?

423

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MAY 23 1997

354

Anna N. Antonio  
CLERK LAKE SUPERIOR COURT

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1 A Correct.

2 Q She described the height -- and, again, we're  
3 referring to these reports -- five feet seven  
4 inches, is that correct?

5 A Correct.

6 Q She described black clothes, correct?

7 A Correct.

8 Q She described a black Kangol cap?

9 A Correct.

10 Q A black leather jacket?

11 A Correct.

12 Q A red bandanna?

13 A Correct.

14 Q She gave an age of twenty-five years, is that  
15 correct?

16 A That's correct.

17 Q She has reference in this report again to the  
18 black leather gloves, is that correct?

19 A That's correct.

20 Q Now, in this instance, I would like you to  
21 look down in what is known as the narrative  
22 section of the report. Was there reference  
23 given by her, or a description of any sort,  
24 about a weapon?

25 A A revolver.



1 Q Now, let's turn please to the offense report  
2 with respect to Mr. Jiminez and Ms. Kimerly  
3 Belinsky. Do you have that in front of you,  
4 sir?

5 A I do.

6 Q We have here -- and I'm going to use the  
7 initials B.J. for this -- male black, five  
8 feet ten inches --

9 A Uh-huh.

10 Q -- black jacket, black pants?

11 A Yes.

12 Q In his twenties?

13 A Correct.

14 Q Now, what I'm going to do is move on with the  
15 offense reports to our last one, and that  
16 would be the offense report prepared with  
17 regard to the Mary Banks' and Sonya Thomas',  
18 her daughter, incident. Is that correct, sir?

19 A That's correct.

20 Q Now --

21 BY MR. BENSON:

22 Judge, I would object. I will  
23 indicate for the record that in  
24 the Bernard Jiminez report  
25 there's also an indication that

1                   there was a gun as well as in Ms.  
2                   Rhonda Williams, and that was  
3                   omitted in those two descriptions  
4                   I believe.

5       BY MR. KING:

6                   If it isn't, I'll put it there.

7       Q       Okay, if you take a second, let's go back to  
8               the report we were just looking at.

9       A       Which one, the Jiminez?

10      Q       Yeah. Now, there's reference to a gun in the  
11             report, is that correct, sir?

12      A       That's correct.

13      Q       Is there any description beyond there being a  
14             gun?

15      A       Excuse me?

16      Q       Like revolver, automatic or color or anything  
17             like that?

18      A       It doesn't indicate it in the report; it  
19             just says a gun.

20      Q       Okay, let's put that up here. All right,  
21             now, let's go to Sonya Thomas. Here we have a  
22             description of a male black, five feet eleven  
23             inches, dark complexion, bad skin, black  
24             pants, black hat, black jacket. Now, under  
25             the hat, the next entry is that it was a

1 Kangol, am I correct, sir?

2 A That's correct.

3 Q Slender build, is that correct?

4 A Correct.

5 Q Now, is it your testimony that based on these  
6 descriptions given by these various victims of  
7 crime that these of necessity describe more  
8 than one perpetrator?

9 A Yes.

10 Q So it must be distinctions based, for example,  
11 on some saying medium complexion, some saying  
12 a dark complexion, is that it?

13 A That's part of the basis.

14 Q Is it some saying five foot seven and some  
15 saying five foot ten?

16 A Part of the basis.

17 Q So as I understand it, sir, as a detective,  
18 you would be of a mind to eliminate as a  
19 suspect a person who was three inches shorter  
20 or taller than the description given by a  
21 victim? Is that of such critical importance  
22 to you?

23 A No, I wouldn't base it all on a two-to  
24 three-inch differential; no, I wouldn't.

25 Q Now, earlier you said, and you were accurate,



1 that in these reports not every one of the  
2 victims of these crimes described a scarred or  
3 a bad-skin situation. That's right, isn't it?

4 A Correct.

5 Q But you know from statements you later took  
6 from Kim Belinsky and from Rhonda Williams  
7 that both of them described that, didn't they?

8 A Correct.

9 Q And you know right off of the offense report  
10 that Sonya Thomas and Mary Banks described bad  
11 skin, is that correct, sir?

12 A That's correct.

13 Q You also see that while some people said he  
14 had a gun, other people said -- were more  
15 specific that he had a blue steel revolver, is  
16 that correct, sir?

17 A Well, in one of the reports there was an  
18 omission, which I couldn't testify the  
19 reason for the omission. The Sonya Thomas  
20 report, which would reflect further, and  
21 Officer Banks' officer's report, it would  
22 reflect that a revolver was displayed.  
23 But in the offense report that the officer  
24 took, he made no indication that a  
25 revolver was displayed. So we might have

1                   discrepancies that I really couldn't  
2                   attest to based on another officer's  
3                   account.

4       Q       Well, since you brought up the topic of  
5       Officer Mary Banks officer's report, it's  
6       something apparently you relied upon as you  
7       set out on your investigation, am I correct,  
8       sir?

9       A       That was more her direct account of what  
10       happened.

11      Q       Whatever it was. Were you made aware of it  
12      and did you utilize it and consider the  
13      information as you investigated these crimes?

14      A       Yes, I read it, yes.

15      Q       Mary Banks in her report, in addition to the  
16      descriptions we have already discussed, in  
17      addition to the times and the locations that  
18      we already discussed, told you that at about  
19      9:20 p.m. February 27th, 1992 a man who she  
20      described when he approached her said, "I just  
21      shot a man. I just shot somebody," isn't that  
22      correct?

23      A       That was in her report.

24      Q       Do you doubt what a fellow officer told you  
25      was said by the perpetrator of an offense?



1 A No, I have no problem with that.

2 Q Did it occur to you as the detective on this  
3 case that Mary Banks saying that at 9:20 she's  
4 approached by a person fitting the same  
5 description given by Rhonda Williams and given  
6 by Ms. Belinsky at a time five minutes after  
7 Mr. Jiminez was shot and approached her with a  
8 gun saying, "I just shot somebody," did that  
9 strike a cord with you --

10 BY MR. BENSON:

11 Objection, Your Honor.

12 BY MR. KING:

13 Q -- possibly linking these offenses together in  
14 your mind?

15 BY THE COURT:

16 Grounds?

17 BY MR. BENSON:

18 Well, he has cleared it up by the rest of  
19 his question.

20 BY THE COURT:

21 All right, you may answer.

22 BY THE WITNESS:

23 Well, I was distracted.

24 BY THE COURT:

25 Would you repeat that then?

1 BY MR. KING:

2 Q \* Did it dawn on you that since Ms. Banks not  
3 only gave this description but also said this  
4 man's words were, "I just shot somebody,"  
5 given the time sequence involved, that it was  
6 on the heels of Mr. Jiminez's death, did it  
7 dawn on you that these two crimes were linked  
8 together by the same perpetrator? Did that  
9 occur to you?

10 BY MR. BENSON:

11 Objection, Your Honor, that was  
12 asked and answered. The witness  
13 testified that he believed --

14 BY MR. KING:

15 I'm on cross-examination.

16 BY MR. BENSON:

17 No, it was asked and answered during  
18 cross-examination.

19 BY MR. KING:

20 I don't care; I am entitled to --

21 BY THE COURT:

22 Well, this being cross --

23 BY MR. BENSON:

24 Judge, I don't care whether defense  
25 counsel cares or not; he can't ask the same

1 question five times on cross.

2 BY MR. KING:

3 Yes, he's right, I shouldn't have said  
4 that. But the point is the law permits on  
5 cross-examination --

6 BY THE COURT:

7 Well, this is cross-examination, and  
8 repetition is not to be encouraged, but I  
9 think that it being cross you may ask it  
10 again. There's a question before you now if  
11 you remember what it is.

12 BY MR. KING:

13 Q Did it dawn on you that these were linked  
14 together?

15 A Yes, it did.

16 Q Now, as I understand your testimony earlier,  
17 you do these line-ups the night of March 3rd,  
18 1992. And am I correct that the same people  
19 were in the same line-ups viewed by all these  
20 different people?

21 A Correct.

22 Q Were they in the same positions, holding the  
23 same number cards in each instance?

24 A Correct.

25 Q Now, would you agree with me, sir, that based



1 upon the description I've written behind you  
2 given you on the Mary Banks-Sonya Thomas  
3 robbery that that's a pretty good description,  
4 is it not?

5 A I don't understand your question.

6 Q Well, look at it. Look at it behind you if  
7 you can read my handwriting. I mean you've  
8 got height, you've got complexion, you've got  
9 the clothing, you've got the Kangol hat, you  
10 got the being slender, and you've got the bad  
11 skin reference. That's a pretty complete  
12 description, would you agree, sir?

13 BY MR. BENSON:

14 Objection; that's argumentative.  
15 "Complete description," what is  
16 that supposed to mean?

17 BY THE COURT:

18 Well, since this is a detective, I think  
19 you can ask that question. Overruled.

20 BY MR. KING:

21 Q It's a pretty complete description, is it not,  
22 sir?

23 A Fairly, yes.

24 Q Now, in order to give a pretty complete  
25 description, one would assume one had a pretty

1 good look at the perpetrator, is that correct,  
2 sir?

3 A Correct.

4 Q And where that person is a fifteen-year  
5 veteran police officer, as is the case with  
6 Mary Banks, would you expect the police  
7 officer's hours and skills of observation to  
8 be better than the average guy on the street?

9 A Mr. King, I can't attest to no one else's  
10 abilities other than my own.

11 Q Well, you guys get trained to do this, don't  
12 you?

13 A Someone put -- officers put more emphasis  
14 on different types of training. We're  
15 different.

16 Q You all go to the academy, don't you?

17 A Yes.

18 Q Pardon?

19 A That's true.

20 Q And you get trained there. You don't get a  
21 badge out of a box of Cracker Jacks, do you?  
22 I mean, you know, somebody doesn't just come  
23 up and anoint you and say, "Okay, you're a  
24 policeman. Go on"? You've got to go to be  
25 trained, don't you?



1 A Supposedly.

2 Q Well, did you?

3 A I did.

4 Q Did you go to class?

5 A Yes, I did.

6 Q Take tests?

7 A I did.

8 Q Did you pass them?

9 A Yes, I did.

10 Q Did you get put on the force?

11 A I did.

12 Q Did Mary? Or did she just get hired because

13 they liked the cut of her jib?

14 A I'm assuming that she went through the

15 same basic requirements.

16 Q So here you have a police officer giving you a

17 description noted right behind you, and this

18 police officer looks at the same line-up and

19 doesn't pick anybody out, is that correct,

20 sir?

21 A No, she didn't pick anyone out.

22 Q And neither did her daughter?

23 A No.

24 Q And neither did Ms. Cullum?

25 A No.

1 Q And neither did Tisa Johnson?

2 A Tisa Johnson didn't view the in-person  
3 line-up.

4 Q Oh, I'm sorry; you are right. But Tisa didn't  
5 pick out the picture?

6 A No.

7 Q State's Exhibit 17, is that correct?

8 A No, she didn't.

9 Q Now, all these line-ups were done the same  
10 night, is that correct?

11 A The in-person, yes.

12 Q Now, you gave us some times earlier when these  
13 line-ups were done. I think you referred to  
14 some documents, is that correct?

15 A Correct.

16 Q You told this jury about a search warrant that  
17 you obtained, is that correct, sir?

18 A That's correct.

19 Q I'm going to hand you what's been marked for  
20 identification as Defendant's Exhibit 2. It's  
21 a document consisting of three pages. I ask  
22 you to take a moment, look at it, and tell me  
23 whether or not you recognize Defendant's 3 for  
24 identification. Have you had the opportunity  
25 to review Defendant's 2 for identification?

1 A Yes.

2 Q What is it?

3 A A search warrant prepared by Corporal John  
4 Jelks.

5 Q Does your name appear on it?

6 A Yes, as one of the affiants.

7 Q Is that the search warrant that issued in this  
8 case?

9 A Yes.

10 Q Is it the original search warrant that issued  
11 in this case?

12 A Yes.

13 Q I direct your attention to the very last page.  
14 Does it appear to be in the same condition it  
15 was in when last you saw it?

16 A Yes.

17 Q And even though Corporal Jelks signed the  
18 affidavit, do you acknowledge that yourself,  
19 Detective Terry Lee and Detective Jelks' names  
20 appear at the top, is that correct, sir?

21 A That's correct.

22 Q And you have previously acknowledged in direct  
23 testimony when the prosecutor was asking you  
24 questions that you participated in obtaining  
25 and serving or executing a search warrant, is



1           that correct?

2           A           That's correct.

3           BY MR. KING:

4                   At this point, the defense would move for  
5           the introduction into evidence of Defendant's  
6           2 marked for identification. Would the record  
7           please reflect I'm tendering that exhibit to  
8           counsel for the State.

9           BY MR. BENSON:

10                   The State has no objection to that.

11           BY THE COURT:

12                   Show Defendant's Exhibit 2 admitted.

13  
14                   WHEREUPON DEFENDANT'S EXHIBIT NUMBER 2 IS  
15           ADMITTED INTO EVIDENCE.

16  
17           BY MR. KING:

18           Q    Now, sir, you participated in the preparation  
19           as well as the execution or the serving of  
          this warrant, is that correct, sir?

          A           Could you expand as far as --

          Q    Well, you knew what was being put into this  
24           affidavit, is that correct, sir? You knew the  
25           information that was being put into it. It  
          was your case, is that correct, sir?

1 A Myself and Corporal Jelks.

2 Q All right.

3 A Right.

4 Q That includes you, right? For the benefit of  
5 the jury, to get a search warrant authorizing  
6 you to go into somebody's house, the first  
7 thing you have to do, a policeman has to do,  
8 the first thing you have to, a policeman has  
9 to do, is take an oath and present facts to a  
10 judge to see if the judge finds there to be  
11 probable cause to issue the warrant, am I  
12 correct?

13 A Correct.

14 Q That's the procedure?

15 A Correct.

16 Q What the policemen have to do is take an oath,  
17 the same oath you took on the stand here  
18 today, and then present this information to a  
19 judge and say, "Judge, we swear this is the  
20 information we know. We would like to have a  
21 warrant," am I correct?

A That's correct.

Q And that, "We swear" business, that's covered  
by page one of Defendant's 2, the affidavit  
for search warrant, am I correct?



1 A Correct.

2 Q Then, if the Judge agrees with you, the  
3 policeman, that under oath you have shown  
4 enough facts to show probable cause to go into  
5 somebody's house and search it, the judge will  
6 issue the actual search warrant, which is a  
7 piece of paper that will let you go in the  
8 home, am I correct, sir?

9 A Correct.

10 Q And then if the judge does that, it's signed  
11 and it's dated, am I correct?


12 A Yes.

13 Q And the time is noted when the warrant issues,  
14 am I correct?

15 A Correct.

16 Q You then take the warrant that the judge  
17 issued and then you serve it and do the  
18 search, am I correct?

19 A Correct.

20 Q And if you find something, you file a report  
21 called an inventory and say, "Okay, we served  
  
it. Here's what we found," am I correct?

A Yes, that would be the return.

Q Now, you have no return in this case, because  
when you searched my client's house, you

1 didn't find anything of evidentiary value, did  
2 you?

3 A No, I didn't.

4 Q And what you were looking for was based upon  
5 the same victims that we have gone through and  
6 written on these pieces of paper about as told  
7 to the police, am I correct, sir?

8 A Correct.

9 Q Pardon?

10 A Basically, what they were told and what we  
11 found out.

12 Q All right. Now, that wasn't just Rhonda  
13 Williams, was it, or Kim Belinsky? It  
14 included Christina Cullum, it included what  
15 Mary Banks and daughter Sonya told you and  
16 what Tisa Johnson told you, isn't that  
17 correct?

18 A Correct.

19 Q Now, you then were telling the judge that you  
20 believe -- and you told him this under oath --  
21 you believe, you have probable cause to  
22 believe that if you went and searched my  
23 client's house, you were going to find stuff  
24 from all these different victims and you were  
25 going to find a gun and you were going to find

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MAY 23 1997

Anna M. Anton  
CLERK LAKE SUPERIOR COURT



1 the clothing, a Kangol cap, a black leather  
2 jacket, a red bandanna worn by the  
3 perpetrator, am I correct, sir?

4 A That's what we were searching for.

5 Q And in order to search, that's what you told  
6 the judge under oath you expected to find, is  
7 that correct, sir?

8 A It wasn't based on expectations, it was  
9 more or less that's what we were searching  
10 for.

11 Q All right, now, because you thought that one  
12 person might have been responsible for all  
13 these robberies?

14 A But at that point, based on my opinion, it  
15 could have been possible or it could not  
16 have been.

17 Q You mean to say you went in front of Judge  
18 Graddick and said, "Judge, I think in my  
19 opinion it might have been possible," or were  
20 you telling the judge, "Judge, we believe, we  
21 have probable cause that these things are  
going to be there when we go looking for  
them"? Now, which is it, Detective?

22 A The probable cause affidavit that Corporal  
23 Jelks had typed up stated that we have

1 probable cause to believe that the items  
2 or fruits from the crimes would be there  
3 so we wanted to search to ascertain if  
4 they were there or not.

5 Q And those items would have been, in reference  
6 to Judge Graddick -- well, for the jury here:  
7 What is the date you guys gave that affidavit  
8 to Judge Graddick to get your warrant?

9 A Like I stated, Mr. King, the actual  
10 presentation of it was done by Corporal  
11 Jelks.

12 Q What is the date? At the bottom under the  
13 search warrant, it's March 3rd, 1992, is that  
14 correct, sir?

15 A That's the date on the search warrant,  
16 yes.

17 Q Right. So we know the document, the affidavit,  
18 part of Defendant's Exhibit 2, was prepared  
19 March 3rd, 1992 but you couldn't get hold of  
20 the judge until the following morning or early  
21 afternoon, is that correct, sir?

22 A Okay, Corporal Jelks prepared the document  
23 based on the evidence that we acquired  
24 working jointly. And later on that night  
25 of the 3rd, we were unable to get in



1 contact with the judge or magistrate until  
2 the following day.

3 Q And when you did find him, he signed the  
4 warrant on March the 4th, am I correct?

5 A That would have been the 4th.

6 Q But your document, your affidavit for the  
7 search warrant, was completed, typed, signed,  
8 fully prepared as of March 3rd, 1992, isn't  
9 that correct, sir?

10 A Yes.

11 Q By at what time? What time of the day or  
12 night was that affidavit prepared, signed and  
13 completed?

14 A Like I stated, Mr. King, Corporal Jelks  
15 prepared the search warrant itself, and  
16 later on that night I can testify to the  
17 search warrant being typed up.

18 Q Sir, I direct your attention to the bottom of  
19 the second page of Defendant's Exhibit 2,  
20 which is now into the evidence. Does it or  
21 does it not say, "Dated this 3rd day of March,  
22 1992 at the hour of 6:00 o'clock p.m."?

23 A Yes, it's on the form, yes.

24 Q All right, and this is the original warrant,  
25 is that correct?



1 A Yes.

2 Q And once again, the affidavit that accompanied  
3 this warrant was signed under the same oath  
4 that was taken by you on this witness stand  
5 here today, is that correct, sir?

6 A Like I stated, Mr. King, when --

7 Q Yes or no, sir.

8 A No, I didn't sign it; Corporal Jelks  
9 signed it, Mr. King.

10 Q The oath, sir, the oath.

11 A The oath was administered to Corporal  
12 Jelks; I did not sign it.

13 Q Now, perhaps you could explain to this jury  
14 how it is that in a document dated and timed  
15 6:00 o'clock p.m., March 3rd, 1992, you could  
16 -- the officers could have included in the  
17 first paragraph that my client had been picked  
18 out of line-ups, line-ups that did not happen,  
19 according to your testimony, until 7:15 to  
20 7:45, more than an hour later than that  
document is signed, timed and dated?

21 A I couldn't answer that. Like I said, Mr.  
22 King, Corporal Jelks prepared this.

23 Q Well, you were working in conjunction with  
24 Corporal Jelks? Earlier, you were.  
25

1 A Yes, if you --

2 Q Would you please look at the top --

3 A I see it.

4 Q Isn't it a fact that in the first paragraph  
5 typed in in that affidavit, you make reference  
6 that my client had been picked out of physical  
7 line-ups?

8 A Mr. King, would you say --

9 Q Yes or no.

10 A You have to expand a little bit on your  
11 question.

12 Q All right, let me read it to you. Read it  
13 with me. "Further that on," now, what's here  
14 is 2-3-92; I'm assuming since these crimes  
15 were not committed until February 27th, it was  
16 intended to state 3-3 of '92. Would that be  
17 accurate, sir?

18 A Yes, it's that date.

19 Q "Willie T. Donald was picked from a physical  
20 line-up by one of the armed robbery victims  
21 and positively identified and was picked from  
22 the physical line-up by the homicide witness  
23 to the killing of Mr. Jiminez." That's in  
24 there, isn't it?

25 A It's there.

1 Q Under the affidavit signed under oath, is that  
2 correct, sir?

3 A Signed by Corporal Jelks.

4 Q And dated March 3rd, 1992 at 6:00 o'clock p.m.  
5 Is that on that document, sir?

6 A It's on the document.

7 Q And once again, can you explain to the jury  
8 how you can have my client at 6:00 o'clock  
9 getting picked out of a line-up that didn't  
10 happen until after 7:00 o'clock? Can you  
11 explain that?

12 A As I stated, Mr. King, I did not put the  
13 time on the document, this document was  
14 prepared by Corporal Jelks. Whether it  
15 was a typographic error or who actually  
16 put 6:00 p.m. on this report, I cannot  
17 testify to.

18 Q Well, you're the detective in charge of the  
19 investigation, am I correct?

20 A Myself and Corporal Jelks.

21 Q Okay, am I getting the gist here that this is  
22 all Jelks' fault? Is that what's happening  
23 here?

24 BY MR. BENSON:

25 Objection, Your Honor, that's



argumentative. It hasn't been established that anyone was at fault.

BY MR. KING:

Well --

BY THE COURT:

Well, yes, as phrased, I would sustain the objection to that question.

BY MR. KING:

Q Jelks goofed up on something else in this investigation, didn't he?

BY MR. BENSON:

I would object; argumentative.

BY THE WITNESS:

A I don't know what you're talking about.

BY THE COURT:

Sustained; order the answer stricken.

BY MR. KING:

Q Well, isn't it a fact that shortly after my client got arrested at his home that one of his sisters informed you that she, along with him, along with her fiancé, Dan Hopkins, were car shopping at Paul Sur Pontiac the night of these offenses?



1 BY MR. BENSON:

2 Objection, Your Honor. Counsel  
3 is testifying and it calls for a  
4 hearsay response.

5 BY MR. KING:

6 Your Honor, it is not hearsay, and I can  
7 document on previous sworn testimony by this  
8 witness that this information was made known  
9 to him. The State has elected to have him  
10 testify as to his opinion, and I am entitled  
11 to present to this jury everything that was  
12 known by this police officer as it regards  
13 that opinion. And included in that is the  
14 evidence I'm proffering at this point; my  
15 basis for it is prior sworn testimony by this  
16 witness given on April 6th, 1992.

17 BY THE COURT:

18 I think that's satisfactory. Counsel, I  
19 need to have you approach the bench on another  
20 issue though.

21  
22 WHEREUPON THE FOLLOWING DISCUSSION WAS  
23 HELD AT THE BENCH OUTSIDE OF THE HEARING OF  
24 THE JURY:  
25

1 BY THE COURT:

2 I got this note about half hour ago. Do  
3 you want to break early and take care of it?

4 BY MR. KING:

5 Yes.

6  
7 WHEREUPON THE FOLLOWING PROCEEDINGS WERE  
8 ONCE AGAIN HELD IN THE HEARING OF THE JURY:  
9

10 BY THE COURT:

11 We need to take a short break at this  
12 point, members of the jury. We'll give you  
13 your afternoon break and again admonish you  
14 not to converse about the case while you're  
15 outside of the courtroom. We'll be in recess  
16 for ten minutes.  
17

18 WHEREUPON THE COURT RECESSED AND  
19 RECONVENED AND THE FOLLOWING PROCEEDINGS WERE  
20 HELD IN THE PRESENCE AND HEARING OF THE JURY:  
21

22 BY THE COURT:

23 Mr. King.

24 BY MR. KING:

25 Q When we broke, I was asking you if you

1 recollected at any point during the course of  
2 your investigation receiving information from  
3 my client's sister regarding my client's  
4 whereabouts the night of February 27th, 1992.

5 A I did; I spoke with her.

6 Q Now, sir, do you have an approximation as to  
7 when you received that information?

8 A Possibly the day after -- the morning  
9 after the arrest.

10 Q I'm sorry?

11 A Okay, it could have possibly have been at  
12 the time we executed the search warrant  
13 which would have been the 4th, 11:00,  
14 12:00, 1:00 o'clock, or that morning, I  
15 think they came down to see us. I think I  
16 came to the station first thing that  
17 morning.

18 Q The morning of the 5th?

19 A No, no, no, no, the day after the arrest,  
20 so we're talking about the 4th, either the  
21 morning at the station or later on at  
22 their house at the execution of the search  
23 warrant.

24 Q And did you receive information from her that  
25 she had been with Willie along with her fiance



1 and they were out car shopping?

2 BY THE COURT:

3 Let me just remind the jury: I believe  
4 there is a hearsay exception if an expert  
5 opinion is being challenged, but anything that  
6 this sister would say that you would learn  
7 about in this questioning itself is not  
8 evidence in this case.

9 Detective Outlaw, I'm sorry. Go ahead.

10 BY MR. KING:

11 Q Do you recall receiving such information from  
12 her?

13 A Yeah, she told me that.

14 Q To your knowledge, have you, did you or  
15 Corporal Jelks or any other officer ever check  
16 that out?

17 A Okay, Mr. King, I didn't check it out  
18 personally.

19 Q Did anybody to your knowledge ever check it  
20 out?

21 A I don't know.

22 Q Was anybody supposed to check it out in the  
23 Gary Police Department?

24 A Yes.

25 Q Who?



1 A Well, between myself and Jelks, he agreed  
2 to check it out.

3 Q Jelks agreed to check it out?

4 A Yes.

5 Q To your knowledge, did he ever check it out?

6 A He never made mention to me about it.

7 Q Have you ever seen a report or a statement or  
8 any other document indicating Jelks or anybody  
9 else from the Gary Police Department, having  
10 been told sometime on the 4th of March about  
11 this information, ever checked it out?

12 A Not to my knowledge.

13 Q Now, as I understand it, when you first went  
14 and arrested my client, that was on what day,  
15 sir? Was that March the 3rd? You can look at  
16 any document here.

17 A Okay, Mr. King --

18 Q Yes, sir.

19 A -- it was March the 3rd.

20 Q What time?

A 6:00 p.m.

Q Now, you said you arrested him on a bench  
warrant that you had located within the office  
of the Clerk of the Gary City Court, correct?

25 A Correct.

1 Q And a bench warrant, as you've indicated, is a  
2 warrant that a court can issue if someone that  
3 is supposed to be there in court doesn't show  
4 up, is that correct?

5 A Failure to appear, yes.

6 Q What were the charges that the bench warrant  
7 reflected? In other words, what case pended  
8 according to the records of the clerk against  
9 Mr. Donald?

10 A Just a second. Traffic infraction.

11 Q And those infractions would have been failure  
12 to carry registration and failure to yield, is  
13 that correct?

14 A That's correct.

15 Q And according to the warrant that you arrested  
16 him on, he had failed to appear on October  
17 16th of 1990, is that correct?

18 A That's correct.

19 Q Now, you weren't particularly interested in  
20 bringing Willie Donald in because he didn't  
1 appear on failure to have registration and a  
2 failure to yield case, were you?

3 A The warrant was pursuant to my  
4 investigation.

25 Q The warrant gave you legal authority to bring

1 just on these offense reports but when it came  
2 to Ms. Belinsky and when it came to Ms.  
3 Williams, you later took more complete in-  
4 depth statements from both of them, am I  
5 correct, sir?

6 A That's correct.

7 Q And these statements were obtained either at  
8 or prior to the time either one of them ever  
9 looked at that picture in State's 17, am I  
10 correct, sir?

11 A Excuse me?

12 Q The timing of the statements you took, Kimerly  
13 Belinsky, do you recollect that to have  
14 occurred February 28th of 1992?

15 A Yes, I have that.

16 Q Now, Rhonda Williams, her statement was 9:40  
17 p.m. March 3rd, 1992, is that correct?

18 A Yes, it was March 3rd about 9:40 p.m.

19 Q Now, her statement -- and by "her" I mean Ms.  
Williams -- when it came to the scarring or  
the acne, she described bump-like scars on his  
face, on his cheeks, am I correct, sir?

A You're referring to Ms. Williams?

24 Q Yes, I am, sir.

25 A Yes.



1 Q And Ms. Belinsky described bad skin, "It  
2 looked like he may have had pimples and  
3 scratched them away and left bad blemishes,"  
4 is that correct, sir?

5 A Correct.

6 Q Now, with again reference to the picture of my  
7 client contained in State's 17, would you  
8 agree that that picture certainly does not  
9 show bump-like scars, and it certainly doesn't  
10 show pimples that had been scratched away  
11 leaving scars?

12 BY MR. BENSON:

13 Object, Your Honor, unless  
14 there's going to be some  
15 reference to a time frame when  
16 that picture was taken.

17 BY THE COURT:

18 Well, there is not and it's not in  
19 evidence in this case that I recall; you're  
referring just to the picture.

BY MR. KING:

23 Exactly, and I'm talking about the  
24 witnesses, Ms. Belinsky and Ms. Williams, and  
25 it has already been said that that's the  
picture they looked at.



1 BY THE WITNESS:

2 Okay, your question?

3 BY MR. KING:

4 Q The question is: Looking at that picture, do  
5 you agree that it does not portray bump-like  
6 scars, the description give by Ms. Williams to  
7 you, or bad skin, pimples that had been  
8 scratched away leaving scars, the description  
9 given by Ms. Belinsky?

10 A Okay, you want my interpretation of the  
11 picture?

12 Q Looking at the picture for whatever reason the  
13 picture was taken. Are you able to sit there  
14 and say that shows bump-like scars on that  
15 person in that picture? Do you think that?

16 A If it is, it's not very prevalent.

17 Q It's not, is it?

18 A (Indicating.)

19 Q Now, when you eliminate these bump-like scars  
20 that were described, when you eliminate hair,  
21 because nobody knew anything about the guy's  
22 hair because of the cap or bandanna or both,  
23 what feature on that persons compared to the  
24 descriptions given by the witnesses, what  
25 could be compared between those two?

1 BY MR. BENSON:

2 Objection, Your Honor. That is  
3 argumentative and speculative.  
4 How much more speculative can you  
5 get than besides what compares  
6 with what might possibly exist?

7 BY MR. KING:

8 Well, it's this detective's opinion that  
9 the State went into in terms of their direct  
10 examination, and I'm entitled -- part of it  
11 was the selection by Ms. Williams and Ms.  
12 Belinsky of this photograph, and I am entitled  
13 to, I believe, with this detective question  
14 his opinion with regard to those observations.  
15 He went into it on direct; I can go into it on  
16 cross it seems to me.

17 BY THE COURT:

18 Well, understand he didn't render an  
opinion as to these photographs, the opinion  
that was --

19 BY MR. KING:

20 I'm not asking him -- the photographic  
21 selection was part and parcel of the opinion  
22 rendered.  
23  
24  
25

1 BY THE COURT:

2 It may have been, yes.

3 BY MR. BENSON:

4 This witness is being asked to interpret  
5 what someone meant by bump-like scars, and  
6 that can mean a hundred different things, and  
7 that is speculation when he's trying to  
8 interpret what someone else used to describe  
9 an individual.

10 BY MR. KING:

11 Q Let me ask this question: Detective, with  
12 respect to Ms. Belinsky and with respect to  
13 Ms. Williams, whatever they meant by bump-like  
14 scars or pimples scratched away leaving scars,  
15 it was a prominent enough feature for them to  
16 recall and relate to the police, is that  
17 correct, sir?

18 A According to -- yes, right.

19 Q Was any description ever given of the mouth or  
20 nose or ears of the perpetrator of these  
21 crimes by any of these witnesses?

22 A The eyes.

23 Q Well, I was asking the nose, the ears. We'll  
24 talk about the eyes in a second. You know,  
25 like, "I remember a real big nose," or, "a



1 real skinny nose," or, "I remember large  
2 ears," or, "I remember small ears," or, "I  
3 remember an earring," anything like that, any  
4 description from any of these people of any of  
5 those features?

6 A No, not that I can recollect.

7 Q Now, you made reference to a description of  
8 the eyes, and Ms. Belinsky gave you a  
9 description initially in a statement of stony-  
10 type eyes, is that correct, sir?

11 A That's correct.

12 Q Did she ever further describe them as kind of  
13 sleepy eyes or half-closed eyes in terms of  
14 explaining what she meant by the phrase  
15 "stony"?

16 A Her interpretation of "stony" she gave to  
17 me, she used some type of cartoon  
18 character to just pick it out -- I'm  
19 trying to think of which one exactly she  
20 used -- but the impression she gave me  
21 based on talking with her was someone  
22 under the influence of drugs.

23 Q Okay. Now, someone under the influence of  
24 drugs, of course, it would depend on what drug  
25 one was under the influence of, would you



1 agree?

2 BY MR. BENSON:

3 I'm going to object, Judge. Now,  
4 Detective Outlaw is a medical  
5 expert on how drugs affect  
6 people's eyes?

7 BY MR. KING:

8 He's a veteran police officer.

9 BY MR. BENSON:

10 A M.D. has a little more training.

11 BY THE COURT:

12 Well, I don't know that he is an expert,  
13 but --

14 BY MR. BENSON:

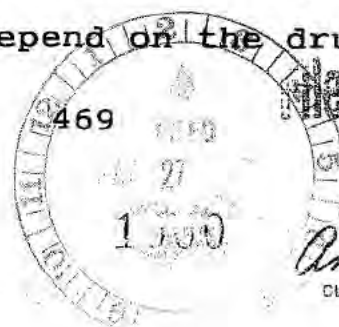
15 How far is the Court going to go in  
16 letting Detective Outlaw offer his opinion as  
17 to anything?

18 BY THE COURT:

19 He was asked the question and he responded  
20 that that's what the witness told him, and  
21 that kind of rudimentary question I think he  
22 could give an answer to.

23 BY MR. KING:

24 Q Do you agree the reaction of a person's eyes  
25 to a drug would depend on the drug involved?



FILED IN CLERK'S OFFICE

MAY 23 1997

Anna N. Anton  
CLERK LAKE SUPERIOR COURT

VANES 001007

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION**

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 35

## Plaintiff's Summary Judgment Response

*Michael G. Brown*  
CLERK LAKE SUPERIOR COURT

V.

STATE OF INDIANA  
Respondent

CAUSE 45G01-9203-CF-00065

**RECEIVED**

JAN 28 2016

*Michael Cabran*  
CLERK LAKE SUPERIOR COURT

1. Petitioner Donald was convicted by a jury in June, 1992, for the murder of Bernard Jiminez and the robbery of Rhonda Williams, separate incidents occurring on the same evening (2/27/92) in the same neighborhood in Gary.

2. The sole issue as trial was the identification of the perpetrator of these crimes. The prosecution presented no physical evidence linking Donald to the crimes, but did present identification testimony from Williams and the Jiminez widow. Each made a positive identification of Donald during the trial, and evidence was presented by the State that each had made a positive pretrial identification of him via photos and/or an in-person lineup. No other persons testified as eyewitnesses to either crime.

3. Donald offered an alibi for both crimes. There was never any suggestion at trial by either the prosecution or the defense that different individuals committed the separate crimes. As was later stated by the Court of Appeals in the course of Donald's direct appeal, whoever committed one offense also committed the other.

4. A few days after the offenses, and prior to Donald's arrest, Williams urgently called the police to report that she'd just seen near her home the man who robbed her, and she requested that

***Willie T. Donald v. State of Indiana, Cause 45G01-9203-CF-00065, p. 2.***

the department send a squad to apprehend him. The street sighting of the robber occurred when Donald was demonstrably elsewhere. It could not have been him. This information was developed by John Jelks, the junior detective on the case, and passed along to the lead detective, Bruce Outlaw, but it was never disclosed to either the prosecution or the defense by Outlaw. It surfaced about one year after the trial when Jelks disclosed it to the defense.

5. In a 2013 deposition, robbery victim Williams testified that when she viewed the books of “mug shots”, looking for the perpetrator, the widow of Bernard Jimenez was seated next to her, looking at books, as well. When Williams pointed to the Donald’s photo, and indicated that that was him, Mrs. Jimenez looked over at the photo to which Williams was pointing, and started to cry. On the form completed by Jimenez identifying whom she selected, the officer noted that Mrs. Jimenez was not completely certain of the identification.

6. Also in the 2013 deposition of Williams, she testified that when she viewed the in-person lineup, she told Outlaw, who was conducting the lineup, that the man in the lineup (Donald) looked bigger and taller than her robber. She further testified that Outlaw then told her that “they arrested him [Donald] across the street from where I live and that they were sure it was him.” Donald was in fact not arrested near the Williams home. Williams went on to indicate that the police were “basically convincing me that it was him” and that Outlaw “convinced me I had picked the right guy.” Williams stated in the deposition that she did not inform the trial prosecutors about (a) her reservations about the identification that she had expressed to Outlaw or (b) Outlaw’s attempts to persuade her about Donald’s guilt. Williams’ also reiterated her belief, first expressed to the police in 1992, that the man by her home several days after the robbery was in fact the one who robbed her.



***Willie T. Donald v. State of Indiana, Cause 45G01-9203-CF-00065, p. 3.***

7. The Gary police did not inform the State or the defense that Williams had reservations about an identification during the in-person lineup, nor about the attempt to persuade her at that time that Donald was guilty in fact. Trial counsel for Donald was unaware of these matters at the time of Donald's trial and could not confront Williams' regarding the exculpatory statements of identification uncertainty because they were never disclosed to him before or during the trial.

8. The prosecution argued at trial that all of the Williams identifications (in-court and pretrial) were positive and that there was never any indication by the witness of any uncertainty on her part at any point in time. The information known to the Gary police at the time would have demonstrated otherwise, had it been disclosed.

**Conclusions of Law**

1. The suppression by the prosecution of evidence favorable to an accused – evidence material either to guilt or punishment – violates the due process clause of the federal constitution, irrespective of the good faith or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Where there is a violation of the duty to disclose exculpatory evidence, commonly known as the *Brady* obligation, a new trial is warranted if it is demonstrated that the withheld or non-disclosed information was material and that non-disclosure of same undermined confidence in the verdict(s).

2. The *Brady* obligation extends to law enforcement agencies, such as the Gary Police Department. The prosecution is ultimately accountable for exculpatory information known only to police investigators. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).

3. Where there are multiple incidents of undisclosed information, the incidents are not

***Willie T. Donald v. State of Indiana, Cause 45G01-9203-CF-00065, p. 4.***

analyzed separately, *in seriatim*, but rather cumulatively. *Goudy v. Basinger*, 604 F.3d 394, 399-401 (7<sup>th</sup> Circ.2010).

4. The street sighting by Williams of someone other than Donald as the perpetrator was the subject of an earlier appeal, but that evidence must be considered again by this Court in light of its obligation to evaluate the cumulative impact of undisclosed evidence upon the fairness of the trial.

5. This was an identification-only trial. There were no other issues. The prosecution's case depended entirely upon identifications made by the two victim eyewitnesses. Evidence calling into question the accuracy of either was material in a case where the identifications were mutually-supporting. If, as the Court of Appeals noted and as this Court concurs, the evidence indicates that whoever committed one crime committed the other, then doubts about Donald's guilt for one crime raises doubts about his guilt of the other. This is especially true in that Mrs. Jimenez' identification was arguably tainted by the fact that she observed and adopted the identification made by Williams.

6. The statements of uncertainty made to Outlaw by the witness at the time of the lineup, and his statements to the witness attempting to assuage her doubts, both when viewed in isolation and when viewed in the combination with the earlier undisclosed information regarding the 1992 street sighting, are material as contemplated by *Brady*, their non-disclosure undermines confidence in the verdicts rendered against the petitioner, and a new trial on both charges is warranted.

#### **Judgment**

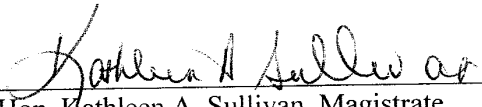
The petitioner's convictions for murder and robbery are vacated, and further proceedings are now ordered in this matter. The Sheriff of Lake County is ordered to transport the Petitioner (DOC #923457) from the Indiana State Prison ( or any other facility within the Department of Correction

***Willie T. Donald v. State of Indiana, Cause 45G01-9203-CF-00065, p. 5.***

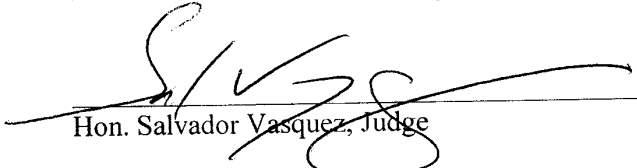
to which he may have been transported prior to this order) to the Lake County Jail for further proceedings on January 28, 2016, before the magistrate. Clerk to notify counsel, the petitioner, the Department of Correction, the Indiana State Prison, and the Lake County Sheriff.

Date: January 25, 2016

So recommended:

  
Hon. Kathleen A. Sullivan, Magistrate

So ordered:

  
Hon. Salvador Vasquez, Judge

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION**

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 36

## Plaintiff's Summary Judgment Response



TO: Dave Wade,  
CHIEF OF POLICE  
  
George Woods,  
Deputy Chief Of Police  
  
John Roby, Deputy Inspector  
Investigative Services

FROM: Lt. C. Mitchell, Commander  
Investigative Division

DATE: March 23, 1992

RE: CPL. BRUCE OUTLAW

DEAR SIRs:

ON FEBRUARY 27, 1992, A ROBBERY/HOMICIDE WAS COMMITTED AT 4660 MASS. STREET, GARY, IN. THIS CASE (92-5357 ROBBERY RELATED HOMICIDE OF BERNARD JIMENEZ) WAS ASSIGNED TO CPL. BRUCE OUTLAW ON THE 4PM TO 12AM SHIFT.

CPL. OUTLAW USING GOOD DETECTIVE WORK GOT A BREAK IN THE CASE AND ARRESTED A SUSPECT (WILLIE DONALD). CPL OUTLAW HAD A LINE-UP AND GOT A POSITIVE IDENTIFICATION OF THE SUSPECT. FOR MANY REASONS, SOME GOOD AND SOME REALLY NOT PERTINENT TO THE CASE, CPL. OUTLAW DECIDED NOT TO FILE THE CASE IN LAKE COUNTY CRIMINAL COURT.

ON MARCH 3, 1992, I DISCUSSED THE CASE WITH SEVERAL DETECTIVES AND DEPUTY INSPECTOR JOHN ROBY. IT WAS DECIDED THAT CPL. OUTLAW WAS TO FILE THE CASE IMMEDIATELY ON THE FACTS ALONE AND NOT ON CONJECTURE. CPL. OUTLAW INSISTED THAT HE DID NOT HAVE ENOUGH EVIDENCE TO FILE. ON MARCH 4, 1992, I, LT. CHARLES MITCHELL, ORDERED CPL. OUTLAW TO FILE THE CASE IN LAKE COUNTY CRIMINAL COURT.

CPL. OUTLAW AND CPL. JELKS, WHERE IN AND OUT OF THE OFFICE ALL DAY ON MARCH 4, 1992. IT WAS LATER, THAT SAME EVENING WHEN I WAS INFORMED BY CPL. OUTLAW THAT THE CASE HAD NOT BEEN FILED. CPL. OUTLAW STATED TO ME, THAT HE WANTED TO CHECK OUT SOME MORE LEADS AND THAT HE WAS GOING TO RELEASE THE SUSPECT. HE FURTHER STATED THAT HE COULD EASILY PICK UP THE SUSPECT AGAIN IF IT BECAUSE NECESSARY.

ON MARCH 5, 1992, I TOLD CPL. OUTLAW TO TAKE THE CASE TO CROWN POINT WITHOUT FURTHER DELAY. AT APPROXIMATELY 9:30AM THAT SAME DAY, CPL. OUTLAW AND SGT. HIGHTOWER WERE IN THE PROCESS OF TRANSPORTING THE SUSPECT TO CROWN POINT, CPL. OUTLAW RECEIVED A CALL AND WAS INFORMED THAT HIS HOME WAS ON FIRE. CPL. OUTLAW INFORMED LT. MITCHELL OF HIS EMERGENCY AND STATED THAT HE COULD NOT GO TO CROWN POINT.

CPL. OUTLAW STATED THAT HE WAS GOING TO CHECK ON HIS HOME AND HIS FAMILY.

AT THIS TIME LT. MITCHELL, INFORMED CPL. OUTLAW THAT DUE TO HIS NEGLIGENCE THE SUSPECT AND CASE COULD HAVE BEEN FILED IN CROWN POINT. LT. MITCHELL TOLD CPL. OUTLAW TO GO HOME AND CHECK ON HIS FAMILY AND IF THE SITUATION WAS NOT A LIFE AND DEATH SITUATION, HE WOULD ASSURE HIS FAMILY THAT AFTER FILING THE CASE HE WOULD BE BACK HOME.

WHEN CPL. OUTLAW ARRIVED AT HIS RESIDENCE AND CHECKED OUT THE SITUATION HE INFORMED SGT. HIGHTOWER WHAT HE WAS NOT GOING TO CROWN POINT.

ONLY AFTER DEPUTY CHIEF WOODS ORDERED CPL. OUTLAW TO FILE THE CASE, DID HE RESPOND.

THE SUSPECT. (WILLIE DONALD) WAS FINALLY CHARGED WITH ROBBERY AND MURDER I AND II.

  
\_\_\_\_\_  
LT. CHARLES MITCHELL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 37

## Plaintiff's Summary Judgment Response

3

1  
2 STATE OF INDIANA ) SUPERIOR COURT OF LAKE COUNTY  
3 COUNTY OF LAKE ) SS: CRIMINAL DIVISION  
4 ) CROWN POINT, INDIANA  
5 WILLIE T. DONALD, )  
6 Petitioner, )  
7 vs. ) CAUSE NO:  
8 STATE OF INDIANA, ) 45G01-9203-CF-00065  
9 Respondent. )

10  
11 The Deposition of RHONDA FLEMING, taken at the  
12 instance of the Defendant, herein, pursuant to notice as to  
13 time and place and pursuant to the Statutes of the State of  
14 Indiana, before Melissa A. Hill, CSR and Notary Public for  
15 the State of Indiana, at the offices of the Lake County  
16 Prosecutor's Office, 2293 North Main Street, Crown Point,  
17 Indiana, on the 28th day of May, 2013, commencing at the  
18 hour of 1:30 in the afternoon.

19  
20  
21  
22  
23  
24 FISSINGER & ASSOCIATES, LTD.  
25 9212 Birch Avenue  
Munster, Indiana 46321  
(219) 972-0600

1 A. Yes.

2 Q. Where are you employed?

3 A. At Bic Graphics.

4 Q. What is that?

5 A. It is a marketing company.

6 MR. VANES: Would you spell Bic?

7 A. B-i-c, Graphics.

8 Q. BY MR. WATSON: And your date of birth, please?

9 A. October 29th, 1960.

10 Q. Where do you currently live, town and state?

11 A. Largo, Florida.

12 Q. How long have you lived in Florida?

13 A. Since 2010.

14 Q. And does Mr. Vanes have a contact phone number and  
15 address for you?

16 A. Yes.

17 Q. Just to be clear, in 1992 when your last name was  
18 known as Williams, you testified in a trial pertaining  
19 to Willie Donald here in Lake County; is that right?

20 A. Yes.

21 Q. And your testimony in that case was directly related  
22 to you being robbed inside your home; is that correct?

23 A. Yes.

24 Q. Within the last year or two I've been provided with a  
25 copy of an affidavit of Rhonda J. Fleming, which

4

## 1 A P P E A R A N C E S 2

2 MR. THOMAS W. VANES  
3 9120 Connecticut Drive, Suite G  
4 Merrillville, Indiana 46410

5 on behalf of the Plaintiff;

6 MR. MARK WATSON  
7 MS. KATHLEEN O'HALLORAN  
8 DEPUTY PROSECUTING ATTORNEYS  
9 2293 North Main Street  
10 Crown Point, Indiana 46307

11 on behalf of the Defendant.

## 12 I N D E X

## 13 DEPOSITION OF: RHONDA FLEMING

14 DX CX RDX RCX  
15 BY MR. WATSON . 2 . . . . . 71 . . . . .  
16 BY MR. VANES . . . . . 57 . . . . . 75 . .

## 17 E X H I B I T S

18 Respondent's Exhibit Number 1 marked . . . . Page 6  
19 Respondent's Exhibit Number 2 marked . . . . Page 32  
20 Respondent's Exhibit Number 3 marked . . . . Page 51

21 RHONDA FLEMING,  
22 being first duly sworn to testify the truth and nothing but  
23 the truth, deposeth and saith as follows:

## 24 D I R E C T E X A M I N A T I O N

25 BY MR. WATSON:

26 Q. Ma'am, please state and spell your full name.

27 A. Rhonda Fleming. It's R-h-o-n-d-a, F-l-e-m-i-n-g.

28 Q. And previously did you go by Rhonda Williams?

29 A. Yes.

30 Q. When did you start going by Fleming?

31 A. In 2004.

32 Q. Are you currently employed?

1 essentially recants your identification of

2 Willie Donald as the person who robbed you; is that  
3 right? Did you do an affidavit recanting that

4 Willie Donald was the person that robbed you?

5 MR. VANES: I'm not sure a civilian would know  
6 what recants signifies.

7 MR. WATSON: Okay.

8 Q. BY MR. WATSON: Did you sign a paper, an affidavit of  
9 Rhonda Fleming indicating that Willie Donald, the  
10 person you had identified, was not the person that  
11 robbed you?

12 A. Correct.

13 Q. All right. To back up just a little bit, my name is  
14 Mark Watson, I'm a deputy prosecuting attorney, and  
15 this is Ms. O'Halloran, she's also a deputy  
16 prosecuting attorney. We'll be asking you -- or I'll  
17 probably be asking you all of the questions today  
18 pertaining to the circumstances of your trial  
19 testimony, what has happened since then, your contact  
20 with the people who obtained the affidavit from you,  
21 things of that nature. If you don't understand a  
22 question that I ask you, just let me know and I'll  
23 rephrase it.

24 A. Okay.

25 Q. The other thing is, and so far this hasn't been an



|  |  |
|--|--|
| <p>5</p> <p>1 issue, when I ask a question please make sure that you</p> <p>2 let me finish, and in return when you answer a</p> <p>3 question I'll make sure I let you finish because the</p> <p>4 gal off to your left is typing everything down and she</p> <p>5 can't type us both at once if we're talking over each</p> <p>6 other. And also just make sure that you clearly state</p> <p>7 yes or no or whatever the answer is because if you</p> <p>8 shake your head or do uh-huhs and huh-uhs, she won't</p> <p>9 know quite what to type down on the transcript. Do</p> <p>10 you have any questions about anything?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> Okay. I have to ask a few questions here that are not</p> <p>13 meant to offend you, but we have to establish the</p> <p>14 answers before we get into some of the other things</p> <p>15 because it will tie in with some of the paperwork</p> <p>16 here. Can you please tell me your level of education?</p> <p>17 <b>A. I have some college.</b></p> <p>18 <b>Q.</b> Okay. What year did you graduate high school?</p> <p>19 <b>A. 1979.</b></p> <p>20 <b>Q.</b> What high school did you graduate from?</p> <p>21 <b>A. Lew Wallace High School.</b></p> <p>22 <b>Q.</b> Do you have -- I see you're wearing glasses. Do you</p> <p>23 have any issues with your vision in terms of being</p> <p>24 able to read documents or things like that?</p> <p>25 <b>A. Without the glasses, yes. With the glasses, no.</b></p> | <p>7</p> <p>1 Respondent's Exhibit 1, there is a line here for</p> <p>2 Rhonda J. Fleming, affiant, and a signature above it.</p> <p>3 Did you, in fact, sign this affidavit?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q.</b> Did you read this document before you signed it?</p> <p>6 <b>A. Yes.</b></p> <p>7 <b>Q.</b> Who actually typed this out, you or somebody else?</p> <p>8 <b>A. Someone else.</b></p> <p>9 <b>Q.</b> And is everything in this affidavit true and correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> Is there any part of it that for whatever reason you</p> <p>12 didn't read because somebody told you to focus on</p> <p>13 something or anything like that?</p> <p>14 <b>A. No.</b></p> <p>15 <b>Q.</b> You read the whole thing?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q.</b> All right. Were any corrections made to this</p> <p>18 affidavit after it was first presented to you? In</p> <p>19 other words, did they originally hand you an affidavit</p> <p>20 and you said, well, this is wrong and this is wrong</p> <p>21 and they went back and made any corrections or did you</p> <p>22 sign it just as it is?</p> <p>23 <b>A. Just as it is.</b></p> <p>24 <b>Q.</b> Again, did this come directly from the person you've</p> <p>25 referred to as Sergio?</p>                 |
| <p>6</p> <p>1 <b>Q.</b> Again, this is not meant at all to offend you, it just</p> <p>2 ties into what we're about to get into. Are you fully</p> <p>3 literate in the English language, you can read and</p> <p>4 write fully the English language?</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> I'm going to show you --</p> <p>7 MR. WATSON: Can I please have this marked?</p> <p>8 (RESPONDENT'S EXHIBIT NUMBER 1 WAS MARKED FOR</p> <p>9 IDENTIFICATION)</p> <p>10 <b>Q.</b> BY MR. WATSON: It's been marked as Respondent's</p> <p>11 Exhibit Number 1.</p> <p>12 <b>A. Okay.</b></p> <p>13 <b>Q.</b> Do you recognize what that is?</p> <p>14 <b>A. Yes.</b></p> <p>15 <b>Q.</b> What is it?</p> <p>16 <b>A. It's an affidavit that was given to me in the presence</b></p> <p>17 <b>of Sergio when I was with Sergio.</b></p> <p>18 <b>Q.</b> Okay. I'll take that back from you for one second.</p> <p>19 If you need to refer to it, I'll give it back to you.</p> <p>20 <b>A. Okay.</b></p> <p>21 <b>Q.</b> You mentioned Sergio. Who is that?</p> <p>22 <b>A. He is -- I believe he is like a teacher or something.</b></p> <p>23 <b>I'm not quite sure what his title is. He was doing</b></p> <p>24 <b>some type of research on this case.</b></p> <p>25 <b>Q.</b> Now, on this affidavit that has been marked as</p>   | <p>8</p> <p>1 <b>A. Yes.</b></p> <p>2 <b>Q.</b> When were you first contacted by Sergio or people that</p> <p>3 were working with him in this case?</p> <p>4 <b>A. I can't remember the day or the year or anything like</b></p> <p>5 <b>that. He came to my home.</b></p> <p>6 <b>Q.</b> In what town at the time?</p> <p>7 <b>A. Indianapolis, Indiana.</b></p> <p>8 <b>Q.</b> Did he call ahead of time or did he show up there?</p> <p>9 How did it work?</p> <p>10 <b>A. He didn't call, he just -- actually, I pulled in my</b></p> <p>11 <b>driveway and I saw another car and then he stepped out</b></p> <p>12 <b>and approached me.</b></p> <p>13 <b>Q.</b> This was the first time --</p> <p>14 <b>A. Yes.</b></p> <p>15 <b>Q.</b> -- anybody had contacted you about any of this? I</p> <p>16 don't mean in terms of the trial and all of that, but</p> <p>17 about --</p> <p>18 <b>A. Yes.</b></p> <p>19 <b>Q.</b> -- a potential affidavit or things of that nature?</p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Q.</b> All right. And what did he say?</p> <p>22 <b>A. He just said that he was here because he wanted to</b></p> <p>23 <b>talk to me about the Willie Donald case, the incident</b></p> <p>24 <b>that happened to me in 1992.</b></p> <p>25 <b>Q.</b> Was this affidavit done on that day?</p> |

|   |   |
|---|---|
| <p style="text-align: right;">9</p> <p>1 <b>A. No.</b></p> <p>2 <b>Q.</b> Okay. When was the next time that you had contact</p> <p>3 with Sergio? And I'm going to keep calling him Sergio</p> <p>4 because that's how you know him.</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> When is the next time you had contact with Sergio or</p> <p>7 somebody else working with him?</p> <p>8 <b>A. I'm not sure of the time and dates or anything like</b></p> <p>9 <b>that.</b></p> <p>10 <b>Q.</b> I guess in relation to this was it the next day, a</p> <p>11 week later, a month later? It doesn't have to be</p> <p>12 exact. I'm just trying to get an idea of --</p> <p>13 <b>A. Maybe a month later.</b></p> <p>14 <b>Q.</b> And where was it at?</p> <p>15 <b>A. I met him at a restaurant.</b></p> <p>16 <b>Q.</b> In what town?</p> <p>17 <b>A. Indianapolis, Indiana.</b></p> <p>18 <b>Q.</b> And what was the purpose of that meeting?</p> <p>19 <b>A. That was just to talk, discuss the case again and he</b></p> <p>20 <b>was also with a reporter.</b></p> <p>21 <b>Q.</b> What kind of reporter, like a newspaper reporter?</p> <p>22 <b>A. I believe she was. I'm not sure about that either.</b></p> <p>23 <b>Q.</b> I understand. The affidavit that we have here as</p> <p>24 Respondent's Exhibit 1, was that done on this</p> <p>25 particular day?</p>                                  | <p style="text-align: right;">11</p> <p>1 and the idea comes up of going to an office building</p> <p>2 and recording your statement?</p> <p>3 <b>A. Yes.</b></p> <p>4 <b>Q.</b> And then you believe that later after that video was</p> <p>5 done they have you do this affidavit?</p> <p>6 <b>A. Correct.</b></p> <p>7 <b>Q.</b> Okay. So, to your recollection, the affidavit is done</p> <p>8 after the videotaped statement?</p> <p>9 <b>A. Correct.</b></p> <p>10 <b>Q.</b> Okay. What was the building you went to for that</p> <p>11 videotaped statement? In other words, did it tie in</p> <p>12 with the reporter's workplace, did it tie in with</p> <p>13 Sergio's workplace, do you know?</p> <p>14 <b>A. No, I don't.</b></p> <p>15 <b>Q.</b> Okay. Because I notice in the video that there is a</p> <p>16 sign behind you, a large sign that says something to</p> <p>17 the effect of The Times of Northwest Indiana. Were</p> <p>18 you aware of that when you gave the statement, that</p> <p>19 that sign was behind you?</p> <p>20 <b>A. No.</b></p> <p>21 <b>Q.</b> You didn't see that?</p> <p>22 <b>A. No.</b></p> <p>23 <b>Q.</b> Okay. Was it a Northwest Indiana Times office, to</p> <p>24 your knowledge, that you went to?</p> <p>25 <b>A. No, I can't --</b></p>   |
| <p style="text-align: right;">10</p> <p>1 <b>A. No.</b></p> <p>2 <b>Q.</b> Okay. When was the next time you had contact with him</p> <p>3 in relation to meeting at the restaurant?</p> <p>4 <b>A. We left the restaurant and then we went to an office</b></p> <p>5 <b>and it was -- we made a tape that day and, I believe,</b></p> <p>6 <b>it was that day that I signed that. I'm not quite</b></p> <p>7 <b>sure.</b></p> <p>8 <b>Q.</b> Okay. Where was the office at?</p> <p>9 <b>A. It was in Indianapolis, Indiana. It was downtown.</b></p> <p>10 <b>Q.</b> And made a tape, do you mean you were recorded giving</p> <p>11 a statement?</p> <p>12 <b>A. Yes, a video. I'm sorry. It was a video.</b></p> <p>13 <b>Q.</b> At the time that you gave that videotaped statement</p> <p>14 then, are you saying you had not still done this</p> <p>15 affidavit?</p> <p>16 <b>A. I believe I had done it afterwards, I believe.</b></p> <p>17 <b>Q.</b> After the video?</p> <p>18 <b>A. Yes. I'm not sure.</b></p> <p>19 <b>Q.</b> Okay. So your recollection is it was on one day</p> <p>20 Sergio comes to your house, you meet with him in your</p> <p>21 home?</p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q.</b> And then they come back sometime a few weeks or a</p> <p>24 month later, somewhere in that range, I'm not trying</p> <p>25 to hold you to an exact day, you meet at a restaurant</p> | <p style="text-align: right;">12</p> <p>1 <b>Q.</b> You just don't recall?</p> <p>2 <b>A. No.</b></p> <p>3 <b>Q.</b> What did they record you with? In other words, was it</p> <p>4 set up to be a room where cameras were already in</p> <p>5 place? I'm not sure if you follow where I'm getting</p> <p>6 at. Was this an audio visual room set up for</p> <p>7 recording or did they have to bring their stuff and</p> <p>8 set it up in there?</p> <p>9 <b>A. I believe that it was already set up when I got there.</b></p> <p>10 <b>Q.</b> Okay. How many video statements did you give in this</p> <p>11 case?</p> <p>12 <b>A. One.</b></p> <p>13 <b>Q.</b> All right. We'll come back to the statement, but for</p> <p>14 now if you could just give me the 30-second version of</p> <p>15 what happened on the day of the robbery?</p> <p>16 <b>A. I was asleep in bed and I heard some scratching at my</b></p> <p>17 <b>bedroom window and I got up and I turned on the light</b></p> <p>18 <b>and the scratching stopped and I said, well, I guess</b></p> <p>19 <b>I'll get ready for work. So I started getting ready</b></p> <p>20 <b>for work and I was fully dressed and I was on my way</b></p> <p>21 <b>out the door and I heard someone knock at the door and</b></p> <p>22 <b>I asked who it was and he said a name and it sounded</b></p> <p>23 <b>like my neighbor, he said he was my neighbor. And so</b></p> <p>24 <b>I opened up the door and the man was standing in the</b></p> <p>25 <b>door with a gun in my face and I was trying to get</b></p> |

|  |  |
|--|--|
| <p>13</p> <p>1 myself together like is this for real or am I</p> <p>2 dreaming, but I realized that there was -- actually a</p> <p>3 man was in my face with a gun and I was getting ready</p> <p>4 to scream and he told me don't do that and he said</p> <p>5 just go back in the house, and I went back in the home</p> <p>6 and he asked me was there anybody here with me and --</p> <p>7 no, he did not say that.</p> <p>8 He asked me -- he said he knows that I'm home</p> <p>9 alone, that's what he said. And he asked me did I</p> <p>10 have any money and I said I've got a little bit and he</p> <p>11 asked me where was it and I told him in my room. And</p> <p>12 he had me go to the room and he followed me with the</p> <p>13 gun and I gave him some money and he had me to lay</p> <p>14 down on the floor, and while I was laying down on the</p> <p>15 floor he asked me did I have a gun and I told him no.</p> <p>16 And then he started to ransack the room and after he</p> <p>17 done that he put a pillow over my head and he put the</p> <p>18 gun in the back of my head and he said that if I</p> <p>19 didn't come up with any more money by the time he</p> <p>20 counted to five that he was going to blow my head off,</p> <p>21 and he counted to four and he told me to get up and</p> <p>22 then we got to the living room and he had me to lay</p> <p>23 down on the floor and he was looking out the door.</p> <p>24 And then he told me to get up again and I walked</p> <p>25 over to the door where he was and he had me to look</p> | <p>15</p> <p>1 trying to hide his face at all?</p> <p>2 <b>A. I didn't even think about that.</b></p> <p>3 <b>Q.</b> Would you say you got a good look at his face during</p> <p>4 all of this?</p> <p>5 <b>A. From the time I opened the door I could see his face,</b></p> <p>6 <b>and I was trying not to really look at it after that.</b></p> <p>7 <b>Q.</b> So do you believe in your mind, in your opinion, based</p> <p>8 on what you observed, do you feel that you got a good</p> <p>9 look at his face?</p> <p>10 <b>A. In my mind I'd say, yes, just that few seconds when I</b></p> <p>11 <b>opened the door. The only thing I could remember was</b></p> <p>12 <b>the bad skin.</b></p> <p>13 <b>Q.</b> Did you get a good look at his face ever again during</p> <p>14 this incident after the period of time when you opened</p> <p>15 the door?</p> <p>16 <b>A. No. I tried not to look.</b></p> <p>17 <b>Q.</b> All right. I believe you said that you called the</p> <p>18 police after that?</p> <p>19 <b>A. Yes.</b></p> <p>20 <b>Q.</b> Did they come to your residence?</p> <p>21 <b>A. Yes.</b></p> <p>22 <b>Q.</b> And did you actually go to the police station that</p> <p>23 night for anything?</p> <p>24 <b>A. No.</b></p> <p>25 <b>Q.</b> What did they do while they were at your house, the</p> |
| <p>14</p> <p>1 out the door and he was standing behind me and he</p> <p>2 asked me did I have a car and I told him that I -- I</p> <p>3 can't remember what I said, but I just know in my mind</p> <p>4 I didn't want him to take my car. I believe I said</p> <p>5 no, but I'm not sure. There was some people outside</p> <p>6 and he was looking around and he told me to come back</p> <p>7 in and get back down on the floor and he asked me how</p> <p>8 old I was and then he left -- told me to stay on the</p> <p>9 floor and he left and I was about to get up and he ran</p> <p>10 back in and he said didn't I tell you to stay down on</p> <p>11 the ground and I just laid there for a long time, it</p> <p>12 felt like a long time anyway. And I got up and I ran</p> <p>13 to the door to lock it and tried looking for the phone</p> <p>14 so I can call the police.</p> <p>15 <b>Q.</b> Was the robbery completely finished at that point?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q.</b> So about how much time approximately do you think it</p> <p>18 took from beginning to end?</p> <p>19 <b>A. I don't know, maybe 45 minutes, 30 minutes. I don't</b></p> <p>20 <b>know.</b></p> <p>21 <b>Q.</b> Was he wearing a mask or anything like that?</p> <p>22 <b>A. No.</b></p> <p>23 <b>Q.</b> Was he making attempts to hide his face?</p> <p>24 <b>A. No.</b></p> <p>25 <b>Q.</b> Did that make you nervous, I guess, that he wasn't</p>  | <p>16</p> <p>1 police?</p> <p>2 <b>A. They just questioned me.</b></p> <p>3 <b>Q.</b> And did you give any written statements at that time?</p> <p>4 I believe they took a police report where they were</p> <p>5 writing, but did you give any written statements to</p> <p>6 them or write anything down to give to them or</p> <p>7 anything like that?</p> <p>8 <b>A. I can't remember.</b></p> <p>9 <b>Q.</b> All right. When was the first time you went to the</p> <p>10 police station in relation to this incident?</p> <p>11 <b>A. I don't know.</b></p> <p>12 <b>Q.</b> If I told you that our records indicate this occurred,</p> <p>13 I believe, on February 27th of 1992, does that sound</p> <p>14 about right?</p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q.</b> Okay. Did there come a point where you did go to the</p> <p>17 police station?</p> <p>18 <b>A. Yes.</b></p> <p>19 <b>Q.</b> And what was the reason you went to the police station</p> <p>20 the first time?</p> <p>21 <b>A. To look at some photos.</b></p> <p>22 <b>Q.</b> Who all was in the room when you were looking at the</p> <p>23 photos? And if you don't know names, that's okay, but</p> <p>24 just describe to me who the people would have been.</p> <p>25 <b>A. Okay. It was me, my mother, and this other woman.</b></p>           |

17

- 1 Q. From being in the room with her or from conversation  
2 or from anything, did you get a sense as to who the  
3 other woman in the room was?
- 4 A. **Well, when she came in the detective brought her in**  
5 **and he was saying -- he was talking to her and I was**  
6 **just over listening to what he was talking to her. He**  
7 **had her to look at some photos, and from there it was**  
8 **like I just put two and two together in my mind of who**  
9 **she was.**
- 10 Q. I guess what was it about the conversation between the  
11 detective and her that led you to put two and two  
12 together?
- 13 A. **Because it was something he said about the death of**  
14 **her -- shooting of her husband or something like that**  
15 **and I just can't remember how I connected it together.**
- 16 Q. The affidavit lays out, I think, that person is termed  
17 as the widow?
- 18 A. **Uh-huh.**
- 19 Q. Is that your term or the term of whoever wrote the  
20 affidavit?
- 21 A. **Whoever wrote that affidavit.**
- 22 Q. All right. Given that Lake County has a decent amount  
23 of violent crime, how could you yourself be sure that  
24 this was the same case as you? It could have been a  
25 family member or something from an unrelated shooting.

18

- 1 I guess I'm just trying to figure out how in your mind  
2 you believed it was this case?
- 3 A. **Well, the detective had said that after the guy left**  
4 **my home he killed someone and I just -- I don't know.**  
5 **It was something that triggered me to believe that it**  
6 **was her.**
- 7 Q. What did this person look like? Not the detective,  
8 the gal who was brought in to look at photos?  
9 Describe her appearance.
- 10 A. **She was Caucasian.**
- 11 Q. Okay. Approximate age?
- 12 A. **I'm not sure.**
- 13 Q. Was she extremely young or extremely advanced in years  
14 or just somewhere in between?
- 15 A. **I would say somewhere in between, I guess. It's hard**  
16 **to tell her age. I don't know.**
- 17 Q. What instructions were you given by the police as to  
18 how to approach the photos you were going to look at?  
19 What did they tell you the purpose of you being there  
20 was?
- 21 A. **To identify who robbed me.**
- 22 Q. And I'm assuming that it crossed your mind that they  
23 might take whatever identification you made and pursue  
24 that further?
- 25 A. **Yes.**

19

- 1 Q. How many pictures would you say you looked at  
2 approximately?
- 3 A. **I don't know, maybe six to eight books. I know it was**  
4 **books and there was photos. I didn't really count**  
5 **them, but I'm going to say at least six to eight books**  
6 **and I'm not sure how many was in each book.**
- 7 Q. Okay. So are we talking in the hundreds of photos or  
8 just like 30 or 40, I guess, is what we're trying to  
9 figure out? I don't know how many pictures were in  
10 the book, I haven't seen them.
- 11 A. **I'm going to say more than 30 or 40.**
- 12 Q. But you can't say if it was over 100?
- 13 A. **No, I can't.**
- 14 Q. And you and the gal that was brought in the room, were  
15 you going through the books at the same time?
- 16 A. **Yes.**
- 17 Q. With each other looking at the same book at the same  
18 time?
- 19 A. **No. She was looking at a book and I was looking at a**  
20 **book.**
- 21 Q. Were you discussing initially what you were seeing in  
22 the books and kind of comparing notes at that time?
- 23 A. **No.**
- 24 Q. Were there any police officers sitting there with you?
- 25 A. **No.**

20

- 1 Q. Did they give you any instructions about how to  
2 approach the photos? What I mean by that is did they  
3 say anything along the lines of he'll definitely be in  
4 here or he may or may not be in here, anything like  
5 that did they give you or any advice as to how to  
6 approach these photo books?
- 7 A. **I can't remember.**
- 8 Q. Okay. How many times did you see at this time a  
9 picture of the person who you eventually picked out of  
10 the books? In other words, was there anybody else you  
11 looked at in those books that you thought could be the  
12 guy or was this photo that you alerted the police to,  
13 was that the only one?
- 14 A. **That's the only one -- well, I'm sorry.**
- 15 Q. Go ahead.
- 16 A. **That's the only one I picked out.**
- 17 Q. Okay. Were there others that you had thoughts about?
- 18 A. **I'm not sure.**
- 19 Q. Okay. What was it about the photo that got your  
20 attention? Why did you think this was one to alert  
21 the police to?
- 22 A. **It was the eyes and the scarring on the face.**
- 23 Q. Now, to be clear, at the time you saw this did you  
24 even know who this guy was?
- 25 A. **No.**



|  |   |
|--|---|
| <p style="text-align: right;">21</p> <p>1 Q. But now after getting into this case a bit, you know</p> <p>2 the person's name wound up being Willie Donald?</p> <p>3 A. <b>Yes.</b></p> <p>4 Q. What was your emotional reaction to seeing the</p> <p>5 picture?</p> <p>6 A. <b>I got a little nervous and scared.</b></p> <p>7 Q. Why?</p> <p>8 A. <b>It was just the eyes.</b></p> <p>9 Q. Why did it scare you though, just because you thought</p> <p>10 it might be the person or is there another reason?</p> <p>11 Why did it make you anxious or nervous at the time?</p> <p>12 A. <b>It just reminded me of the person that robbed me.</b></p> <p>13 Q. All right. Now, did you -- when you were giving your</p> <p>14 statement to -- I'm going to keep calling him Sergio</p> <p>15 for clarity's sake and consistency. Did you talk with</p> <p>16 Sergio about that, that your initial emotional</p> <p>17 reaction upon seeing the photo was that it made you a</p> <p>18 little bit nervous and scared?</p> <p>19 A. <b>I believe so.</b></p> <p>20 Q. Okay. So who did you tell back that day at the police</p> <p>21 station? What did you do when you saw this photo?</p> <p>22 A. <b>I just told them that -- I just pointed him out and I</b></p> <p>23 <b>said that's him.</b></p> <p>24 Q. Who did you say that to?</p> <p>25 A. <b>The detective. Well, she was in there too, the lady</b></p> | <p style="text-align: right;">23</p> <p>1 <b>they came over and pointed to him.</b></p> <p>2 Q. At the exact moment when you first saw this photo</p> <p>3 though, was a police officer sitting with you and</p> <p>4 watching you?</p> <p>5 A. <b>Oh, no.</b></p> <p>6 Q. After the fact somebody came in?</p> <p>7 A. <b>Right.</b></p> <p>8 Q. You just can't recall whether you called for them or</p> <p>9 they came in coincidentally?</p> <p>10 A. <b>Right.</b></p> <p>11 Q. Okay. And what did you actually say to the police</p> <p>12 officer who came in the room about that photo, as best</p> <p>13 as you can recall?</p> <p>14 A. <b>I just said that I believe this is -- it's him right</b></p> <p>15 <b>here.</b></p> <p>16 Q. Do you happen to recall if you said that to the actual</p> <p>17 detective or just some officer that was kind of</p> <p>18 overseeing the room or do you know?</p> <p>19 A. <b>I believe there was a detective that came in.</b></p> <p>20 Q. All right. Now, prior to seeing that picture, had</p> <p>21 anybody said anything to you along the lines of, hey,</p> <p>22 take a close look at this one or kind of give you a</p> <p>23 hint that this is the person to look at, anything like</p> <p>24 that?</p> <p>25 A. <b>Not at that time.</b></p>    |
| <p style="text-align: right;">22</p> <p>1 <b>and my mom, and I said this is -- I believe this is</b></p> <p>2 <b>him, just like that (indicating).</b></p> <p>3 Q. You said I believe this is him?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. And it won't show up on the transcript, but you kind</p> <p>6 of pointed your finger?</p> <p>7 A. <b>Yeah, at the picture (indicating).</b></p> <p>8 Q. Okay. I believe this is him and then you're saying</p> <p>9 that the gal that was brought in later was --</p> <p>10 A. <b>She came -- she looked over at it.</b></p> <p>11 Q. What did she say?</p> <p>12 A. <b>And she just nodded her head and then she just started</b></p> <p>13 <b>crying.</b></p> <p>14 Q. So what was said, if anything, after that between you</p> <p>15 and her?</p> <p>16 A. <b>Nothing.</b></p> <p>17 Q. Nothing more?</p> <p>18 A. <b>I don't believe so.</b></p> <p>19 Q. So what did you do in terms of letting the police</p> <p>20 officer know that?</p> <p>21 A. <b>Someone came in, I believe someone -- I can't remember</b></p> <p>22 <b>how it all -- either somebody was called or somebody</b></p> <p>23 <b>at the time in the middle of us watching, I mean,</b></p> <p>24 <b>looking at the photos, if somebody else was in there,</b></p> <p>25 <b>an officer or something, I can't remember, but anyway,</b></p>  | <p style="text-align: right;">24</p> <p>1 Q. So the initial discovery of the photo was yours?</p> <p>2 A. <b>Right.</b></p> <p>3 Q. And you said that the resemblance that caught your</p> <p>4 attention was the eyes?</p> <p>5 A. <b>And the scarring on the face.</b></p> <p>6 Q. Anything else that jumped out at you about the photo?</p> <p>7 A. <b>I can't remember. I just remember those two.</b></p> <p>8 Q. All right. So what happened after you alerted the</p> <p>9 police, what was the next thing that happened?</p> <p>10 A. <b>They called me and had me come downtown -- I mean, to</b></p> <p>11 <b>the -- to do a line-up or wherever that might be. I'm</b></p> <p>12 <b>not sure.</b></p> <p>13 Q. After you told them about the photo, they sent you</p> <p>14 home?</p> <p>15 A. <b>Yeah.</b></p> <p>16 Q. Was there anything else to be done at that time before</p> <p>17 you left they had you do?</p> <p>18 A. <b>I can't remember.</b></p> <p>19 Q. All right. So you went home and they called you?</p> <p>20 A. <b>Right.</b></p> <p>21 Q. When did they call you in relation to you being at the</p> <p>22 station?</p> <p>23 A. <b>Maybe that evening or -- I remember it was in the</b></p> <p>24 <b>evening.</b></p> <p>25 Q. What did they say when they called you?</p> |

25

1 **A. We would like you to come down and look at a line-up.**  
2 **Q.** When you say a line-up, was it like an in-person  
3 line-up or a bunch of photos on a piece of paper?  
4 **A. In person.**  
5 **Q.** Was the detective there when you went down to the  
6 station?  
7 **A. Yes.**  
8 **Q.** Now, do you happen to know the detective's name that  
9 you were dealing with or did you come to learn it  
10 later?  
11 **A. He introduced himself as Outlaw.**  
12 **Q.** So any time in this deposition when we've been talking  
13 about the detective, you've been talking about him?  
14 **A. Yes, correct.**  
15 **Q.** You got down to the station and tell me what happened  
16 with the line-up.  
17 **A. The only -- I saw a man. The only thing I can**  
18 **remember is seeing this guy. I don't know -- at the**  
19 **time I didn't know if it was Willie Donald or not and**  
20 **then it was -- I didn't know his name, I guess I would**  
21 **say, I didn't know his name and he said is that him**  
22 **and I said he looks bigger and taller than the guy**  
23 **that robbed me.**  
24 **Q.** You told this to the police?  
25 **A. Yes.**

26

1 **Q.** Let me back up for just a second. When you first got  
2 there, I'm assuming that Detective Outlaw accompanied  
3 you to some kind of room where there's some glass  
4 between you and the people?  
5 **A. Correct.**  
6 **Q.** Okay. And who else was in the room with you at the  
7 time you're doing this?  
8 **A. I want to say it was just me and him.**  
9 **Q.** Okay. The gal who had been in the room with you when  
10 you were looking at the photo books, was she in the  
11 room with you when you're doing the line-up?  
12 **A. No.**  
13 **Q.** Okay. So, I guess, to the best of your recollection,  
14 it's you and the detective, if there's somebody else  
15 you're not recalling it right now?  
16 **A. Correct.**  
17 **Q.** Okay. And it's your testimony that they bring in the  
18 people and I'm assuming you at least -- well, did you  
19 recognize the person you picked out of the photo as  
20 being in that line-up? The person you picked out of  
21 the photo books, did you see him in the line-up?  
22 **A. I'm -- I would say yes.**  
23 **Q.** Okay. Just for me to clarify for you a little bit, I  
24 guess all I'm asking you at this point is if the  
25 person that you saw in those books was in the line-up?

27

1 I'm not necessarily getting to the part where we say  
2 is the person that robbed you in the line-up. I just  
3 want to know if the person you saw in those books that  
4 day wound up being in that line-up when you went back  
5 to the police station?  
6 **A. Okay. When you say line-up, you know, when I look at**  
7 **movies there will be two or three guys, right, four**  
8 **guys. There was only one that I saw.**  
9 **Q.** You only saw one person in the line-up?  
10 **A. Yes.**  
11 **Q.** They didn't bring out like five guys for you to look  
12 at?  
13 **A. No, they just brought him. I don't remember -- I only**  
14 **remember seeing one guy. I don't know if I was just**  
15 **focusing just --**  
16 **Q.** So based on your recollection right now, you recall  
17 the police just brought one person out for you to look  
18 at and asked you yes or no is this the guy?  
19 **A. Yes.**  
20 **Q.** And what did you tell them? As best you can, exactly  
21 what did you tell them?  
22 **A. I said he's too big, he's too tall.**  
23 **Q.** You said that directly to Detective Outlaw?  
24 **A. Yes.**  
25 **Q.** Or whatever detective it was?

28

1 **A. Yes.**  
2 **Q.** He's too big, he's too tall?  
3 **A. Yes.**  
4 **Q.** In your opinion, since you were there, did you make it  
5 clear to him that guy you're showing me is not the  
6 guy?  
7 **A. Yes.**  
8 **Q.** And what, if anything, did the police officer say when  
9 you said that to him?  
10 **A. He just said okay and in that room --**  
11 **Q.** We'll get to the rest.  
12 **A. Okay.**  
13 **Q.** I'll let you explain what happened later.  
14 **A. Okay.**  
15 **Q.** I'm trying to go in order here. Did they bring out  
16 any other people then for you to look at for an  
17 in-person line-up?  
18 **A. No.**  
19 **Q.** So the only in-person line-up you ever were a witness  
20 to was the one we just talked about?  
21 **A. Yes.**  
22 **Q.** And, to your recollection, it was just you and the  
23 detective in the room, not the gal from the room with  
24 the photo books?  
25 **A. Correct.**

29

- 1 Q. All right. So what happened next?
- 2 A. **Then he was talking to me and he was telling me that**
- 3 **they arrested him across the street from where I live**
- 4 **and that they were sure that it was him.**
- 5 Q. Was this conversation had in that same room or was
- 6 this later?
- 7 A. **Later.**
- 8 Q. So where are you at now?
- 9 A. **I believe that I'm either in the hallway or -- because**
- 10 **I'm not sitting.**
- 11 Q. You're not giving your formal statement yet?
- 12 A. **No.**
- 13 Q. He's telling you he lives across the street?
- 14 A. **They arrested him across the street.**
- 15 Q. From where you lived?
- 16 A. **Yes.**
- 17 Q. What else did they tell you?
- 18 A. **And they told me that I was doing the right thing,**
- 19 **basically convincing me that it was him.**
- 20 Q. And all of this was said after you told them
- 21 essentially that's not the guy?
- 22 A. **Correct.**
- 23 Q. But they said you're doing the right thing?
- 24 A. **Yes. He said they believe that it was him and they**
- 25 **asked me, but I just told them that he just looked too**

30

- 1 **big, just like that, he just looked too big.**
- 2 Q. Who else was present for this conversation?
- 3 A. **It was just me and him.**
- 4 Q. In some hallway not sitting down?
- 5 A. **Right.**
- 6 Q. Okay. So what was the next step after that
- 7 conversation?
- 8 A. **I went home.**
- 9 Q. When did you give a formal written statement?
- 10 A. **I'm not sure.**
- 11 Q. Was it that night?
- 12 A. **Maybe.**
- 13 Q. Did you -- by the time you did this affidavit, I'm not
- 14 sure, but it sounds like you had two conversations
- 15 with Sergio?
- 16 A. **Uh-huh.**
- 17 Q. Okay. Did you tell Sergio?
- 18 MR. VANES: Was that a yes?
- 19 A. **Yes. I'm sorry.**
- 20 Q. BY MR. WATSON: That's all right. Did you tell that
- 21 to Sergio in these two conversations that you had told
- 22 the police officer that the guy in the in-person
- 23 line-up was the wrong guy?
- 24 A. **I told him that he was too big and that -- yes. And,**
- 25 **yes, I did tell him, I believe, that it was the wrong**

31

- 1 **guy.**
- 2 Q. Okay. Did you tell Sergio or people working with him
- 3 though that you told the police at that time it was
- 4 the wrong guy?
- 5 A. **Yes.**
- 6 Q. Okay. Because I don't see it in the affidavit and, I
- 7 guess, that's my question: Why does it not appear in
- 8 this affidavit that you told the police this
- 9 information?
- 10 MR. VANES: Objection to the form of the question
- 11 because it calls for speculation.
- 12 MR. WATSON: Are you telling her not to answer
- 13 it?
- 14 MR. VANES: No.
- 15 MR. WATSON: For the record?
- 16 MR. VANES: Yes.
- 17 Q. BY MR. WATSON: Do you understand my question?
- 18 A. **Can you repeat the question?**
- 19 Q. I'll try and rephrase it a little bit. You read over
- 20 the affidavit before you signed it?
- 21 A. **Uh-huh.**
- 22 MR. VANES: That's yes?
- 23 A. **Yes. I'm sorry.**
- 24 Q. BY MR. WATSON: It happens all the time, trust me. I
- 25 believe it's your testimony that prior to doing this

32

- 1 affidavit you had informed Sergio of what you told the
- 2 police about the line-up?
- 3 A. **Yes.**
- 4 Q. Did you ask them -- did you ever ask Sergio or anybody
- 5 else why it wasn't in the affidavit?
- 6 A. **No.**
- 7 Q. All right. So you don't recall if you gave your
- 8 actual written statement that night or not? You may
- 9 have, but you're not sure or you're sure you didn't?
- 10 A. **I'm not sure.**
- 11 Q. So when, to your recollection, would you say how much
- 12 longer would it have been before you did that written
- 13 statement?
- 14 A. **I don't know.**
- 15 Q. But you did do one?
- 16 A. **Yes.**
- 17 Q. And who was present for the written statement?
- 18 A. **I believe Detective Outlaw.**
- 19 (RESPONDENT'S EXHIBIT NUMBER 2 WAS MARKED FOR
- 20 IDENTIFICATION)
- 21 Q. BY MR. WATSON: We've had this document marked as
- 22 Respondent's Exhibit 2. If you don't mind, you don't
- 23 have to necessarily read it, but just take a look at
- 24 it, there's several pages, and I'm just going to ask
- 25 you in a second here if you recognize what that is?

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| <p>33</p> <p>1 <b>A. No, I don't.</b></p> <p>2 <b>Q.</b> You don't recognize that?</p> <p>3 <b>A. No, it's been so long.</b></p> <p>4 <b>Q.</b> I understand. There's a few other pages. Now, there</p> <p>5 is a signature line, I believe, on every page?</p> <p>6 <b>A. Yes.</b></p> <p>7 <b>Q.</b> Does that appear to you to be -- and you can look at</p> <p>8 these as well, I'm just going to show you where they</p> <p>9 are. Does that appear to you to be your signature?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> Okay. The exhibit is shown to be a statement of</p> <p>12 Rhonda Jermaine Williams. I believe there is a</p> <p>13 signature line that's cut off on the bottom of the</p> <p>14 first page, but there's also on the bottom of the</p> <p>15 second page, bottom of the third page, and then we get</p> <p>16 to the fourth page and it's a photographic line-up</p> <p>17 admonition, which has a signature line for you and a</p> <p>18 printed name and then the last page is a six-person</p> <p>19 photo line-up. After having a chance to look at the</p> <p>20 whole thing, does that refresh your recollection at</p> <p>21 all as to being the statement that you gave to</p> <p>22 Detective Outlaw in this case?</p> <p>23 <b>A. Yes.</b></p> <p>24 <b>Q.</b> I'm sorry?</p> <p>25 <b>A. Yes.</b></p>              | <p>35</p> <p>1 <b>Q.</b> All right. A document like this, I know -- well, when</p> <p>2 you gave the statement, did you sign it after reading</p> <p>3 it? Did you read the statement is what I'm asking</p> <p>4 you?</p> <p>5 <b>A. No, I just signed it.</b></p> <p>6 <b>Q.</b> Why would you do that?</p> <p>7 <b>A. I'm just trusting that it's okay, that it's correct.</b></p> <p>8 <b>Q.</b> Okay. So when the police finished typing up this</p> <p>9 statement, did they give you the opportunity to read</p> <p>10 it?</p> <p>11 <b>A. I can't remember.</b></p> <p>12 <b>Q.</b> Okay. But it's your recollection that you just signed</p> <p>13 it and did not review it?</p> <p>14 <b>A. Correct.</b></p> <p>15 <b>Q.</b> Attached to the statement I reference that there is a</p> <p>16 sheet of paper that shows six photographs?</p> <p>17 <b>A. Correct.</b></p> <p>18 <b>Q.</b> Do you recall picking somebody out of a paper photo</p> <p>19 line-up such as this?</p> <p>20 <b>A. No.</b></p> <p>21 <b>Q.</b> Is it possible that you've forgotten doing that or you</p> <p>22 just don't believe that you ever did that?</p> <p>23 <b>A. No, because the only photos that I looked at was in</b></p> <p>24 <b>that book.</b></p> <p>25 <b>Q.</b> Okay. Do you recall ever seeing before this sheet</p>   |
| <p>34</p> <p>1 <b>Q.</b> Okay. Do you have any reason to believe that's not</p> <p>2 the statement you gave in this case?</p> <p>3 <b>A. It's been so long. I haven't read this, so --</b></p> <p>4 <b>Q.</b> I understand. Review what you think you need to, if</p> <p>5 you want to take a minute or two. We've taken about a</p> <p>6 minute, a minute and a half here for you to review</p> <p>7 Respondent's Exhibit Number 2. After looking at this,</p> <p>8 what are your thoughts as to what it is?</p> <p>9 <b>A. I believe that's the statement.</b></p> <p>10 <b>Q.</b> You did give a statement in this case to the</p> <p>11 detective?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> And there's some signature lines on here. Do you</p> <p>14 believe the signatures to be yours?</p> <p>15 <b>A. They are mine.</b></p> <p>16 <b>Q.</b> All right. Do you yourself have any reason, as you</p> <p>17 sit here now and you look at this, to think this isn't</p> <p>18 your statement? Is there anything that jumps out at</p> <p>19 you as not being consistent with what you remember</p> <p>20 doing?</p> <p>21 <b>A. I just briefly looked at it. So what I've read, that</b></p> <p>22 <b>is what I said.</b></p> <p>23 <b>Q.</b> I understand. You read parts of it, but not the whole</p> <p>24 thing?</p> <p>25 <b>A. Correct.</b></p> | <p>36</p> <p>1 that says photographic line-up admonition?</p> <p>2 <b>A. I don't remember.</b></p> <p>3 <b>Q.</b> Is it possible that you were shown this at the time or</p> <p>4 do you just believe that you never saw it?</p> <p>5 <b>A. This particular sheet?</b></p> <p>6 <b>Q.</b> Correct.</p> <p>7 <b>A. I don't remember. I just don't remember all what I</b></p> <p>8 <b>signed, I don't.</b></p> <p>9 <b>Q.</b> And attached to that is this six-person line-up and</p> <p>10 it's your testimony that you've never seen that</p> <p>11 before?</p> <p>12 <b>A. I never seen that paper before.</b></p> <p>13 <b>Q.</b> Now, do you recall in your statement whether the</p> <p>14 police asked you about viewing the in-person line-up?</p> <p>15 <b>A. Could you repeat that?</b></p> <p>16 <b>Q.</b> Do you recall during this statement we're talking</p> <p>17 about, when you gave a written statement did the</p> <p>18 police ask you any questions about what you saw during</p> <p>19 the in-person line-up?</p> <p>20 <b>A. I don't remember that.</b></p> <p>21 <b>Q.</b> Okay. So since you don't remember that, I'm guessing</p> <p>22 you don't remember them asking you if you were</p> <p>23 absolutely sure of your identification? Do you recall</p> <p>24 them asking you that question?</p> <p>25 <b>A. I don't remember that.</b></p> |



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| <p style="text-align: right;">37</p> <p>1 Q. This is really for purposes of the record, so we can<br/> 2 get it all out there. In this statement there is a<br/> 3 question at the top of the last page and the question<br/> 4 is: "I will now show you a photographic array of<br/> 5 pictures numbered 1-6. I want you to closely look at<br/> 6 the photographs and tell me if you recognize anyone<br/> 7 and if so from where?" To be clear, you just don't<br/> 8 remember if that question was asked?<br/> 9 <b>A. No, I don't.</b><br/> 10 Q. Okay. So obviously you don't remember your answer<br/> 11 being that you recognize Picture Number 2, correct?<br/> 12 <b>A. Correct.</b><br/> 13 Q. And then there is another question at the top of that<br/> 14 page, the second question down --<br/> 15 (OFF THE RECORD)<br/> 16 Q. BY MR. WATSON: To pick up where we left off, on that<br/> 17 same Page 3 of 3 from the statement, there is another<br/> 18 question and I'm just asking you if you remember it<br/> 19 being asked. The question is, "I now ask you if you<br/> 20 viewed a police line-up at the Gary Police Department<br/> 21 on March 3rd, 1992 at approximately 7:30 p.m. and if<br/> 22 you did, were you able to make an identification of<br/> 23 any suspects to the incident when you were robbed?"<br/> 24 Do you recall being asked that question?<br/> 25 <b>A. Yes.</b></p> | <p style="text-align: right;">39</p> <p>1 Did you have to go down to the police station any more<br/> 2 that you recall?<br/> 3 <b>A. I don't believe so.</b><br/> 4 Q. All right. To get back to where we started here, at<br/> 5 the beginning of the deposition we talked a little bit<br/> 6 about your being approached by a person that you know<br/> 7 as Sergio and being asked questions. What was the<br/> 8 first thing that he said to you about this whole<br/> 9 thing?<br/> 10 <b>A. He just said that he just wanted to talk to me about<br/> 11 it, the incident, and he was saying where he was from<br/> 12 and why he was there.</b><br/> 13 Q. Now, at some point this case obviously went to court<br/> 14 and you were subpoenaed to testify, correct?<br/> 15 <b>A. Correct.</b><br/> 16 Q. All right. At some point did you talk to the<br/> 17 prosecutor handling the case about your uncertainty?<br/> 18 <b>A. No.</b><br/> 19 Q. Ever? Did you ever tell the prosecutor handling the<br/> 20 case that I'm not sure if I picked out the right<br/> 21 person, was that ever brought up?<br/> 22 <b>A. No.</b><br/> 23 Q. Why not?<br/> 24 <b>A. He convinced me that I had picked the right guy.</b><br/> 25 Q. Who convinced you?</p>                    |
| <p style="text-align: right;">38</p> <p>1 Q. During the formal statement?<br/> 2 <b>A. Yes, I believe so.</b><br/> 3 Q. So do you recall what your answer was during the<br/> 4 formal statement to that question?<br/> 5 <b>A. I believe I probably said yes.</b><br/> 6 Q. Why do you believe you probably said yes?<br/> 7 <b>A. Because they convinced me that this was the guy,<br/> 8 but --</b><br/> 9 Q. Well, do you specifically recall telling them that or<br/> 10 are you just guessing as to what you told them?<br/> 11 <b>A. I just recall telling them that.</b><br/> 12 Q. You do recall telling them yes? And to clarify, the<br/> 13 reason you're saying you told them yes was because<br/> 14 they had convinced you of that?<br/> 15 <b>A. Yes.</b><br/> 16 Q. Do you recall specifically giving this answer, "Yes, I<br/> 17 recognized the man holding number 4 as the person who<br/> 18 forced his way into my home at gun-point and robbed me<br/> 19 on February 27th, 1992." Do you recall giving that<br/> 20 answer?<br/> 21 <b>A. What's 4?</b><br/> 22 Q. I can just read you the answer. You either recall it<br/> 23 or you don't.<br/> 24 <b>A. I don't.</b><br/> 25 Q. Okay. What happened after you gave your statement?</p>  | <p style="text-align: right;">40</p> <p>1 <b>A. Outlaw.</b><br/> 2 Q. Okay. So you didn't feel the need to tell the<br/> 3 prosecutor because Outlaw had convinced you that it<br/> 4 was the right person?<br/> 5 <b>A. Correct.</b><br/> 6 Q. Again, I'm not trying to be condescending at all, but<br/> 7 you are aware that in Illinois they call the<br/> 8 prosecutor, I think, the state's attorneys and here<br/> 9 they call us deputy prosecutors? So when I say<br/> 10 prosecutor, I mean also state's attorney. Did you<br/> 11 ever tell the state's attorney that you were uncertain<br/> 12 about your identification?<br/> 13 <b>A. No.</b><br/> 14 Q. All right. Did you ever have a conversation over the<br/> 15 phone with anybody telling them that you were -- I<br/> 16 guess I should say anybody in law enforcement, anybody<br/> 17 that had to do with the trial, did you ever tell<br/> 18 anybody over the phone that you were uncertain about<br/> 19 your identification?<br/> 20 <b>A. No.</b><br/> 21 Q. So, I guess, at the time this case went to trial you<br/> 22 expressed your concern only to Detective Outlaw, is<br/> 23 that a fair statement?<br/> 24 <b>A. Yes.</b><br/> 25 Q. Who was the prosecutor you were primarily dealing with</p> |

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| <p style="text-align: right;">41</p> <p>1 when they were calling you at trial and maybe asking</p> <p>2 for your statement again to get it straight for trial?</p> <p>3 Were you speaking with a male or a female or do you</p> <p>4 recall?</p> <p>5 <b>A. I don't recall.</b></p> <p>6 <b>Q.</b> So when you were at trial, what do you recall saying</p> <p>7 your level of certainty was to the jury that was</p> <p>8 sitting there in the courtroom?</p> <p>9 <b>A. Well, they just asked me to point him out.</b></p> <p>10 <b>Q.</b> You don't recall them asking you if you were positive?</p> <p>11 <b>A. I don't recall that.</b></p> <p>12 <b>Q.</b> All right. In your video statement to Sergio you</p> <p>13 indicated that you had been rushed. Can you describe</p> <p>14 for me what you mean by that? When were you rushed, I</p> <p>15 guess, is what I'm saying? Are you talking about when</p> <p>16 the police were investigating or when the case went to</p> <p>17 trial?</p> <p>18 <b>A. When the police was investigating.</b></p> <p>19 <b>Q.</b> Okay. Now, it's also my understanding from going</p> <p>20 through the case file that after the robbery you had</p> <p>21 seen someone outside of your house or on your street</p> <p>22 that you thought was the person that robbed you?</p> <p>23 <b>A. Yes.</b></p> <p>24 <b>Q.</b> Okay. And you called the police?</p> <p>25 <b>A. Yes.</b></p> | <p style="text-align: right;">43</p> <p>1 <b>A. I was going slow because I believe that I was at a</b></p> <p>2 <b>stop sign and I was making a turn.</b></p> <p>3 <b>Q.</b> How many people approximately were in the group of</p> <p>4 people that you saw?</p> <p>5 <b>A. Two.</b></p> <p>6 <b>Q.</b> And at the exact moment that you saw this person, did</p> <p>7 you believe that that was the person that robbed you?</p> <p>8 <b>A. Yes.</b></p> <p>9 <b>Q.</b> Was this before or after you went down and looked at</p> <p>10 the photo books at the police station?</p> <p>11 <b>A. It was after.</b></p> <p>12 <b>Q.</b> What is your level of certainty that it was after?</p> <p>13 <b>A. Because I had looked at the photos and the reason I</b></p> <p>14 <b>remember is because I wouldn't go home and I purchased</b></p> <p>15 <b>a dog so I thought that would make me feel better to</b></p> <p>16 <b>go back home and when I saw him I wanted them to come</b></p> <p>17 <b>and get him. I had already picked out -- I already</b></p> <p>18 <b>had been to the police station for the photo.</b></p> <p>19 <b>Q.</b> Okay. So you went to your house and called the</p> <p>20 police?</p> <p>21 <b>A. No. I went to my mom's house and called because I</b></p> <p>22 <b>didn't want to go back home.</b></p> <p>23 <b>Q.</b> All right. Did you tell the police everything that</p> <p>24 happened?</p> <p>25 <b>A. Yes.</b></p> |
| <p style="text-align: right;">42</p> <p>1 <b>Q.</b> And you believe, as you sit here now, what about</p> <p>2 whether that person was the perpetrator or not? Did</p> <p>3 you think the person you saw outside your house was</p> <p>4 the person that robbed you?</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> What was it about that person that made you believe</p> <p>7 that person was the person that robbed you?</p> <p>8 <b>A. It was his build, his face, his eyes. That was it.</b></p> <p>9 <b>Q.</b> Okay. Were you walking or driving at the time you saw</p> <p>10 that person?</p> <p>11 <b>A. Driving.</b></p> <p>12 <b>Q.</b> Somewhere in the case file it says you may have been</p> <p>13 coming back from purchasing a dog? Does that sound</p> <p>14 familiar?</p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q.</b> Does that sound right from where you were coming from?</p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q.</b> So was there actually a dog in the car with you at the</p> <p>19 time?</p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Q.</b> And when you were actually driving and this person</p> <p>22 caught your attention, how fast were you going</p> <p>23 approximately? I know you don't know the exact speed,</p> <p>24 but were you making a turn, were you driving straight?</p> <p>25 Give me some idea.</p>  | <p style="text-align: right;">44</p> <p>1 <b>Q.</b> And what, if anything, was done?</p> <p>2 <b>A. I don't know.</b></p> <p>3 <b>Q.</b> You didn't have to go and give another statement or</p> <p>4 anything like that about that particular incident?</p> <p>5 <b>A. No.</b></p> <p>6 <b>Q.</b> All right. Did you tell the officer who you spoke</p> <p>7 with that you had already identified somebody as the</p> <p>8 person that robbed you --</p> <p>9 <b>A. No.</b></p> <p>10 <b>Q.</b> -- in the books? You didn't tell them that?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> Why not? Why wouldn't you tell them that?</p> <p>13 <b>A. I didn't think it was necessary. I wanted the guy</b></p> <p>14 <b>that I just saw, I wanted them to come get him. I</b></p> <p>15 <b>didn't think about that.</b></p> <p>16 <b>Q.</b> Okay. How did you know that the person that you had</p> <p>17 seen on the road wasn't the same person you had picked</p> <p>18 out of the photo books?</p> <p>19 <b>A. I didn't.</b></p> <p>20 <b>Q.</b> You didn't know?</p> <p>21 <b>A. No.</b></p> <p>22 <b>Q.</b> In your statement to Sergio you had mentioned that the</p> <p>23 prosecutors had coached you on what to say. Do you</p> <p>24 recall telling Sergio that?</p> <p>25 <b>A. Yes.</b></p>   |

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| <p style="text-align: right;">45</p> <p>1 Q. What do you mean when you say they coached you?</p> <p>2 <b>A. They convinced me that this was the guy and when --</b></p> <p>3 <b>before I went to trial, they was just telling me</b></p> <p>4 <b>little things to say.</b></p> <p>5 Q. Such as?</p> <p>6 <b>A. I can't remember. I just know that -- I just remember</b></p> <p>7 <b>them telling me what they'll probably ask you and you</b></p> <p>8 <b>say this, what they'll probably ask you, you know, you</b></p> <p>9 <b>say that.</b></p> <p>10 Q. Were they telling you to say things that were not</p> <p>11 true?</p> <p>12 <b>A. I'm going to say yes.</b></p> <p>13 Q. Well, such as what?</p> <p>14 <b>A. I can't remember them all. I can't remember</b></p> <p>15 <b>everything.</b></p> <p>16 Q. Can you remember any of them though?</p> <p>17 <b>A. Like when they ask you is this the defendant, you</b></p> <p>18 <b>know, the guy, just, you know, say yes and I do</b></p> <p>19 <b>remember that.</b></p> <p>20 Q. But had you given them any reason to think that wasn't</p> <p>21 true, the prosecutors?</p> <p>22 <b>A. I don't know. I don't believe so. I'm not sure. I</b></p> <p>23 <b>don't believe so. I'm not sure.</b></p> <p>24 Q. I understand it's been a long time. I understand</p> <p>25 that, but I have to dig into this a little bit. I</p> | <p style="text-align: right;">47</p> <p>1 felt pressured and intimidated by the prosecutor.</p> <p>2 When I told him that I couldn't swear in court that</p> <p>3 Mr. Donald was the perpetrator, the prosecutor warned</p> <p>4 me that if I didn't testify the perpetrator would get</p> <p>5 away with robbery as well as murder."</p> <p>6 <b>A. That's correct.</b></p> <p>7 Q. Well, the reason I have to dig into this is because</p> <p>8 you've told me already on a couple of occasions that</p> <p>9 you never told the prosecutor you had reservations.</p> <p>10 So that's why I'm asking and that's why I have to ask</p> <p>11 the questions. I understand it's uncomfortable, but I</p> <p>12 have to understand why you're saying what you're</p> <p>13 saying in Number 7 and by Number 7 I mean on this</p> <p>14 affidavit.</p> <p>15 <b>A. Right.</b></p> <p>16 Q. Number 7, so --</p> <p>17 <b>A. And, like I said, I don't -- with me not into law and</b></p> <p>18 <b>all of this, prosecutor, I can't remember anybody's</b></p> <p>19 <b>title that talked to me.</b></p> <p>20 Q. Okay. So, as you sit here now, I guess to make it as</p> <p>21 kind of straightforward as I can, --</p> <p>22 <b>A. Uh-huh.</b></p> <p>23 Q. -- I need to know, please, who specifically pressured</p> <p>24 and intimidated you? That's what I'm basically trying</p> <p>25 to ask.</p>                              |
| <p style="text-align: right;">46</p> <p>1 mean, what I'm trying to focus on is: Was there</p> <p>2 anything that they told you to say that you had told</p> <p>3 them, hey, that's not true?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Okay. Now, you said that they had convinced you that</p> <p>6 this was the guy. You're talking about the</p> <p>7 prosecutors?</p> <p>8 <b>A. I'm talking about Outlaw, if he is a prosecutor or</b></p> <p>9 <b>whatever.</b></p> <p>10 Q. He is a police officer.</p> <p>11 <b>A. Okay. That's it.</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. I guess I'm getting kind of frustrated because I don't</b></p> <p>14 <b>remember a lot of this stuff. It's been a long time</b></p> <p>15 <b>for me. I have tried to block out this whole deal</b></p> <p>16 <b>here, you know, but I do know that that is not the guy</b></p> <p>17 <b>and I've carried this for a long time now and so I am</b></p> <p>18 <b>getting a little frustrated.</b></p> <p>19 Q. I do understand that, I do, but I have to dig into</p> <p>20 this and I'll tell you why. These are some pretty</p> <p>21 serious allegations you're making.</p> <p>22 <b>A. Right.</b></p> <p>23 Q. I mean, you have specifically said in here in the</p> <p>24 affidavit, "I testified at the trial of Willie T.</p> <p>25 Donald and identified him in court mostly because I</p>    | <p style="text-align: right;">48</p> <p>1 <b>A. I'm going to say it was Outlaw. That's the only</b></p> <p>2 <b>person I remember ever talking to and I'm -- you know,</b></p> <p>3 <b>at the time, like I said, I don't know anybody's title</b></p> <p>4 <b>like officer or prosecutor or -- I know what a judge</b></p> <p>5 <b>is.</b></p> <p>6 Q. I understand, I do. I'm just -- this is what I've</p> <p>7 been provided about what you're going to say, this</p> <p>8 affidavit and a video. So I need to make sure that I</p> <p>9 cover this.</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. Okay. So, as you sit here now, and tell me if I'm</p> <p>12 wrong, but as you sit here now, you believe that the</p> <p>13 only person that made you feel pressured and</p> <p>14 intimidated was Detective Outlaw; is that fair?</p> <p>15 <b>A. Yeah.</b></p> <p>16 Q. And, again, tell me if I'm wrong, I'm just trying to</p> <p>17 figure it out, you don't believe that you expressed</p> <p>18 reservation or told the prosecutors themselves, the</p> <p>19 people in court, you don't believe you told them that</p> <p>20 when you spoke with them?</p> <p>21 <b>A. Right. I don't believe so, no.</b></p> <p>22 Q. You don't believe so?</p> <p>23 <b>A. No, I don't believe so.</b></p> <p>24 Q. Okay. We're getting close to being done here. Going</p> <p>25 back now to when you first talked to Sergio, how long</p> |

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| <p style="text-align: right;">49</p> <p>1 did it take to get to the point where you kind of</p> <p>2 admitted to him that what you said in court was not</p> <p>3 the truth? I mean, how long into the conversation did</p> <p>4 that come up? Did you tell him immediately or did it</p> <p>5 take a while, what happened?</p> <p>6 <b>A. I told him immediately.</b></p> <p>7 <b>Q.</b> All right. Did you yourself have any questions about</p> <p>8 whether or not you could get in any kind of trouble</p> <p>9 for it? Did that come up in your conversation with</p> <p>10 him?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> Did he make any promises or anybody associated with</p> <p>13 him make any promises to you about what could or could</p> <p>14 not happen?</p> <p>15 <b>A. No.</b></p> <p>16 <b>Q.</b> They never said anything to you along the lines of the</p> <p>17 statute of limitation has passed, those words didn't</p> <p>18 come up?</p> <p>19 <b>A. No.</b></p> <p>20 <b>Q.</b> Did they in any way try and influence you in your</p> <p>21 mind?</p> <p>22 MR. VANES: They being?</p> <p>23 MR. WATSON: I'm sorry.</p> <p>24 <b>Q.</b> BY MR. WATSON: Sergio and the people that were</p> <p>25 working with him, did they try and influence you to</p> | <p style="text-align: right;">51</p> <p>1 <b>A. No.</b></p> <p>2 <b>Q.</b> I'm talking about --</p> <p>3 <b>A. He gave me something stating that -- he showed me</b></p> <p>4 <b>something stating that I said that he was too large</b></p> <p>5 <b>and too tall, that I actually said that.</b></p> <p>6 <b>Q.</b> Was this the first meeting that he showed you this?</p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q.</b> And was it before or after you told him, you know,</p> <p>9 hey, I wasn't completely truthful at trial? Did he</p> <p>10 show you that before or after you said that to him?</p> <p>11 <b>A. After.</b></p> <p>12 <b>Q.</b> So you had already admitted to him that I said some</p> <p>13 things that weren't true in court?</p> <p>14 <b>A. Yes.</b></p> <p>15 <b>Q.</b> Then he showed you the notes?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q.</b> Okay.</p> <p>18 MR. WATSON: Can I get this marked, please?</p> <p>19 (RESPONDENT'S EXHIBIT NUMBER 3 WAS MARKED FOR</p> <p>20 IDENTIFICATION)</p> <p>21 <b>Q.</b> BY MR. WATSON: This is Respondent's Exhibit Number 3,</p> <p>22 two pages. As you sit here now, do you recognize what</p> <p>23 that is?</p> <p>24 <b>A. It seems familiar to me.</b></p> <p>25 <b>Q.</b> Is it possible that that is a copy of the same notes</p> |
| <p style="text-align: right;">50</p> <p>1 say anything?</p> <p>2 <b>A. No.</b></p> <p>3 <b>Q.</b> Okay. Did they tell you that they thought Mr. Donald</p> <p>4 was innocent?</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> Did they tell you why they thought that?</p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q.</b> And what did they say?</p> <p>9 <b>A. They said that the day that I picked out the guy on</b></p> <p>10 <b>the street Willie Donald was somewhere else.</b></p> <p>11 <b>Q.</b> When did they first tell you that, which meeting?</p> <p>12 <b>A. The first one.</b></p> <p>13 <b>Q.</b> Okay. Did you know that prior to them telling you</p> <p>14 that?</p> <p>15 <b>A. No.</b></p> <p>16 <b>Q.</b> Okay. Were they friendly to you throughout this?</p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q.</b> At any point did -- were you shown any notes that they</p> <p>19 advised you came from a police officer's file or a</p> <p>20 prosecutor's office file or anything like that? Did</p> <p>21 they tell you that some notes were found?</p> <p>22 <b>A. Just my testimony. I think it was my testimony or</b></p> <p>23 <b>something, I believe.</b></p> <p>24 <b>Q.</b> What did they tell you? And I'm not talking about</p> <p>25 meeting with Mr. Vanes.</p>        | <p style="text-align: right;">52</p> <p>1 you were shown by Sergio?</p> <p>2 <b>A. Yes. It could be, yes.</b></p> <p>3 <b>Q.</b> All right. When he showed you these notes, did you</p> <p>4 remember a conversation where you said these things?</p> <p>5 <b>A. No, because -- no.</b></p> <p>6 <b>Q.</b> All right. You were going to say because. Because</p> <p>7 why?</p> <p>8 <b>A. Because all this time I wished that I had told</b></p> <p>9 <b>somebody.</b></p> <p>10 <b>Q.</b> When did you start feeling that way?</p> <p>11 <b>A. I don't know, maybe years after.</b></p> <p>12 <b>Q.</b> Because I don't know if you recall, after the trial do</p> <p>13 you recall being subpoenaed to come back for another</p> <p>14 hearing?</p> <p>15 <b>A. No.</b></p> <p>16 <b>Q.</b> No?</p> <p>17 <b>A. No.</b></p> <p>18 <b>Q.</b> And it wouldn't have been a trial, there wouldn't have</p> <p>19 been a jury sitting in there, but just a court hearing</p> <p>20 where you were asked some questions about seeing the</p> <p>21 gentleman on the street. You don't remember that</p> <p>22 hearing?</p> <p>23 <b>A. No.</b></p> <p>24 <b>Q.</b> Since you don't remember the hearing, I'm pretty sure</p> <p>25 I know the answer to the next question here, but do</p>                       |



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| <p>53</p> <p>1 you recall an investigator from this office coming to</p> <p>2 talk with you about the hearing?</p> <p>3 <b>A. No.</b></p> <p>4 <b>Q.</b> No? All right. We can take five minutes. I'm</p> <p>5 guessing we have about 10 or 15 minutes left in the</p> <p>6 deposition, but we can take a break now, if you want.</p> <p>7 <b>A. No.</b></p> <p>8 <b>Q.</b> All right. So you don't remember coming back to court</p> <p>9 and you don't remember an investigator coming to talk</p> <p>10 to you again?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> Was there ever a time that you told anybody in law</p> <p>13 enforcement after the trial was over that you thought</p> <p>14 you might have picked out the wrong person?</p> <p>15 <b>A. No.</b></p> <p>16 <b>Q.</b> I think -- and I'm just letting you know. I think the</p> <p>17 hearing I'm talking about that was after the trial, I</p> <p>18 want to say that was about a year and a half later and</p> <p>19 the subject of that hearing was focused on the person</p> <p>20 you saw standing on the road and the attorney,</p> <p>21 Mr. King, was there and the prosecutor was there and a</p> <p>22 judge was there. You just don't remember having that</p> <p>23 hearing?</p> <p>24 <b>A. No, I don't.</b></p> <p>25 <b>Q.</b> Are you in any kind of contact any more with Sergio or</p> | <p>55</p> <p>1 <b>Q.</b> BY MR. WATSON: Just a few more. Was there ever a</p> <p>2 time that you believed you had picked out the right</p> <p>3 person?</p> <p>4 <b>A. Yes, the guy on the walk.</b></p> <p>5 <b>Q.</b> Was there ever a time that you believed the person you</p> <p>6 picked out of the photo books was the right person?</p> <p>7 <b>A. No.</b></p> <p>8 <b>Q.</b> You always from the beginning felt that was not him?</p> <p>9 <b>A. Right.</b></p> <p>10 <b>Q.</b> Did that start when you viewed the in-person line-up</p> <p>11 or did it start even before that?</p> <p>12 <b>A. In person.</b></p> <p>13 <b>Q.</b> Okay. So, I guess, for whatever period of time there</p> <p>14 was between the photo books and the in-person line-up,</p> <p>15 you thought it was the right person; is that correct?</p> <p>16 <b>A. From the photo I thought that was the correct person.</b></p> <p>17 <b>Q.</b> Then as soon as you got to the line-up, the in-person</p> <p>18 line-up, then you did not believe that was the person?</p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q.</b> And from that point on you did not believe that was</p> <p>21 the right person?</p> <p>22 <b>A. Correct.</b></p> <p>23 <b>Q.</b> All right. When you were approached by the group with</p> <p>24 Sergio, was it ever mentioned to you that there was</p> <p>25 another person that they thought was the actual</p> |
| <p>54</p> <p>1 the people from wherever he was working?</p> <p>2 <b>A. No.</b></p> <p>3 <b>Q.</b> Since the video interview, I guess it was in</p> <p>4 Indianapolis, has there been any further contact</p> <p>5 between you and them?</p> <p>6 <b>A. No.</b></p> <p>7 <b>Q.</b> Was there ever a time when -- and I'm not necessarily</p> <p>8 singling out him, he is just the person that I'm aware</p> <p>9 of, I don't know who all you dealt with. Was there</p> <p>10 ever a time that anybody from the people he was</p> <p>11 working with ever tried to influence you or tell you</p> <p>12 what to say when this went to court?</p> <p>13 <b>A. No.</b></p> <p>14 <b>Q.</b> I'm sorry. What was your answer?</p> <p>15 <b>A. If it went to court when?</b></p> <p>16 <b>Q.</b> For this. Did anyone ever try and tell you what to</p> <p>17 say when you had a deposition?</p> <p>18 <b>A. No.</b></p> <p>19 <b>Q.</b> Were you -- again, I'm not trying to insult you, I'm</p> <p>20 just trying to cover all of my bases. Were you ever</p> <p>21 offered anything, any kind of reward money or anything</p> <p>22 like that to do this?</p> <p>23 <b>A. No.</b></p> <p>24 <b>Q.</b> Give me just a second here.</p> <p>25 <b>(BREAK TAKEN)</b></p>  | <p>56</p> <p>1 perpetrator? Did they tell you that?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> Which meeting was it that they told you that?</p> <p>4 <b>A. I want to say the first meeting.</b></p> <p>5 <b>Q.</b> And what did they say about that, what information did</p> <p>6 they have?</p> <p>7 <b>A. I can't remember what that was.</b></p> <p>8 <b>Q.</b> Did they ever mention any specifics or was it just</p> <p>9 generally we think we know who did it?</p> <p>10 <b>A. I can't remember if it was like that.</b></p> <p>11 <b>Q.</b> And was this brought up to you before or after you</p> <p>12 acknowledged to them that you had picked out the wrong</p> <p>13 person?</p> <p>14 <b>A. It was after.</b></p> <p>15 <b>Q.</b> After? Was any information given by them to you about</p> <p>16 this case before you told them that you thought you</p> <p>17 picked out the wrong person? In other words, did they</p> <p>18 give you reasons they thought you picked out the wrong</p> <p>19 person before you admitted that to them?</p> <p>20 <b>A. No.</b></p> <p>21 <b>Q.</b> No? Everything they told you came after?</p> <p>22 <b>A. Exactly.</b></p> <p>23 <b>Q.</b> All right. I don't have any other questions, but is</p> <p>24 there anything that you want to add at this point that</p> <p>25 you think might help things at all?</p>  |

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| <p style="text-align: right;">57</p> <p>1 <b>A. I just wish that I had said something sooner.</b></p> <p>2 <b>Q.</b> Okay. Is there any of the questions I asked you that</p> <p>3 you feel I didn't give you a chance to explain your</p> <p>4 answers or anything you want to add to any of those</p> <p>5 answers?</p> <p>6 <b>A. The questions that you asked me why I didn't say, you</b></p> <p>7 <b>know, I was scared, I was nervous, and I guess I just</b></p> <p>8 <b>wanted it to be over with.</b></p> <p>9 <b>Q.</b> The questions when I asked you why, why what?</p> <p>10 <b>A. Why I didn't say something to the officers or --</b></p> <p>11 <b>Q.</b> Okay. We just had about a five to ten-minute break.</p> <p>12 Was there anything that you thought of during that</p> <p>13 break that you wanted to bring up now about anything</p> <p>14 we've talked about today?</p> <p>15 <b>A. No.</b></p> <p>16 MR. WATSON: Okay. I don't have any other</p> <p>17 questions. I think Mr. Vanes does.</p> <p>18 CROSS - EXAMINATION</p> <p>19 BY MR. VANES:</p> <p>20 <b>Q.</b> When Sergio first approached you in Indianapolis</p> <p>21 several years back, what was your initial reaction</p> <p>22 when he identified himself and told you the topic he</p> <p>23 wanted to talk about? Was your reaction one of fear,</p> <p>24 anger, relief, nervousness? And I'm not limiting the</p> <p>25 choices to just those. You tell us, Rhonda. What was</p> | <p style="text-align: right;">59</p> <p>1 <b>Q.</b> You should be sorry for what you did, anyone of any</p> <p>2 sort?</p> <p>3 <b>A. No.</b></p> <p>4 <b>Q.</b> Was the regret entirely a product of your own</p> <p>5 thinking?</p> <p>6 <b>A. It was my own thinking.</b></p> <p>7 <b>Q.</b> Okay. Is this something that just popped up in the</p> <p>8 last few years or does it go back into the '90s? Do</p> <p>9 you remember when you started dwelling on it to some</p> <p>10 extent with any sense of regret?</p> <p>11 <b>A. It would come and go. It was in the '90s and I would</b></p> <p>12 <b>forget, try to press it away, and then it would come</b></p> <p>13 <b>back again in the 2000s.</b></p> <p>14 <b>Q.</b> So you lived with this a long time?</p> <p>15 <b>A. Correct.</b></p> <p>16 <b>Q.</b> Okay. You teared up on occasions here during the</p> <p>17 course of this deposition. How have you emotionally</p> <p>18 dealt with this lingering sense of regret, what have</p> <p>19 you done? For example, have you ever received</p> <p>20 counseling regarding it?</p> <p>21 <b>A. I'm sorry?</b></p> <p>22 <b>Q.</b> Have you ever received counseling regarding this?</p> <p>23 <b>A. Not regarding this, but just other issues.</b></p> <p>24 <b>Q.</b> Such as? Without getting too personal, I guess, but I</p> <p>25 guess I have to.</p> |
| <p style="text-align: right;">58</p> <p>1 your reaction when he popped up in your driveway and</p> <p>2 said he wanted to talk about this?</p> <p>3 <b>A. I was -- actually, I had some relief that somebody was</b></p> <p>4 <b>showing up to do something because I had basically</b></p> <p>5 <b>been praying about this and I didn't know how to go</b></p> <p>6 <b>about reversing this and so I was glad that he was</b></p> <p>7 <b>there.</b></p> <p>8 <b>Q.</b> Now, you said to Mr. Watson that at some point a few</p> <p>9 years after the trial and the robbery and all of the</p> <p>10 legal proceedings you began to get regrets about what</p> <p>11 you had said or done in the course of the</p> <p>12 investigation, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 <b>Q.</b> What prompted the regrets?</p> <p>15 <b>A. I'm sorry?</b></p> <p>16 <b>Q.</b> What prompted those regrets?</p> <p>17 <b>A. It was that, I guess, I felt guilty for not saying</b></p> <p>18 <b>anything and this man was going to jail and just</b></p> <p>19 <b>started thinking about family and all of that, you</b></p> <p>20 <b>know.</b></p> <p>21 <b>Q.</b> Let me ask it this way: Did anyone put the idea of</p> <p>22 regret in your head, did anyone come to you and</p> <p>23 suggest you should be concerned, you shouldn't have</p> <p>24 said that?</p> <p>25 <b>A. No.</b></p>   | <p style="text-align: right;">60</p> <p>1 <b>A. Well, emotionally, you know, I -- I don't know. I</b></p> <p>2 <b>just feel bad that I didn't say anything. I've got a</b></p> <p>3 <b>lot of guilt and shame, you know, and -- well, the end</b></p> <p>4 <b>result is I do have to take anti-depressants and</b></p> <p>5 <b>things like that.</b></p> <p>6 <b>Q.</b> Now, someone from Project Innocence in general,</p> <p>7 they're the ones that paid for your flight up here,</p> <p>8 correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 <b>Q.</b> Okay. Did they give you the money to buy it yourself</p> <p>11 or did they just book it and tell you what the flights</p> <p>12 were?</p> <p>13 <b>A. They booked it.</b></p> <p>14 <b>Q.</b> Yesterday I bought you and your mother some breakfast</p> <p>15 when we met for the first time, correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 <b>Q.</b> Beyond those two things, has anyone else given you any</p> <p>18 other money?</p> <p>19 <b>A. No.</b></p> <p>20 <b>Q.</b> For time lost or anything --</p> <p>21 <b>A. No.</b></p> <p>22 <b>Q.</b> -- at work? Okay. What do you do at Bic Graphics?</p> <p>23 <b>A. I'm a credit coordinator.</b></p> <p>24 <b>Q.</b> What does that mean?</p> <p>25 <b>A. I deal with large accounts and customers who order</b></p>  |

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| <p style="text-align: right;">61</p> <p>1 <b>large dollar items and I have to look at their credit</b></p> <p>2 <b>to make sure that they have enough funds, they're not</b></p> <p>3 <b>going over their limit, and get the orders released so</b></p> <p>4 <b>the customers can receive it.</b></p> <p>5 Q. You're missing work at least today by being up here,</p> <p>6 right?</p> <p>7 A. <b>Right.</b></p> <p>8 Q. Is anyone compensating you for your time up here?</p> <p>9 A. <b>No.</b></p> <p>10 Q. How are you dealing with that at work?</p> <p>11 A. <b>I'm sorry?</b></p> <p>12 Q. How are you dealing with the missed time at work?</p> <p>13 A. <b>I'm using my vacation.</b></p> <p>14 Q. Did you know from the neighborhood after this robbery</p> <p>15 that there had been other robbery victims or other</p> <p>16 people shot the same night that you were robbed, did</p> <p>17 you learn that from any source?</p> <p>18 A. <b>I learned that from the police officer.</b></p> <p>19 Q. Do you know which police officer told you that? Let</p> <p>20 me back up.</p> <p>21 There would have been at least one police officer</p> <p>22 at your house that night or early that morning taking</p> <p>23 the initial information from you about what had</p> <p>24 happened, correct?</p> <p>25 A. <b>Yes.</b></p>  | <p style="text-align: right;">63</p> <p>1 MR. WATSON: I'd say at least that, somewhere in</p> <p>2 that neighborhood.</p> <p>3 Q. BY MR. VANES: Approximately 10 by 15 feet?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. At the time you were in there looking at books, your</p> <p>6 mom was in there?</p> <p>7 A. <b>Yes.</b></p> <p>8 Q. She's here with you today?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. And there was a white woman in there who you pieced</p> <p>11 together who you believe was a victim of the same</p> <p>12 night's crimes?</p> <p>13 A. <b>Correct.</b></p> <p>14 Q. Were any police officers in there monitoring all three</p> <p>15 women continuously?</p> <p>16 A. <b>I don't think so.</b></p> <p>17 Q. Did they leave you at least to some extent on your</p> <p>18 own?</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. I assume they brought the books to you?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. You didn't have to go fetch them and carry them into</p> <p>23 the room?</p> <p>24 A. <b>No.</b></p> <p>25 Q. Do you remember -- other than Outlaw, were any other</p>   |
| <p style="text-align: right;">62</p> <p>1 Q. And then you would have dealt with at least one other</p> <p>2 police officer, Detective Outlaw, in the course of</p> <p>3 photo books and/or physical line-ups, true?</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. Do you remember which officer would have told --</p> <p>6 which of those two or any others that would have told</p> <p>7 you, hey, other people got stuck up or shot too?</p> <p>8 A. <b>I can't remember how I got that information other than</b></p> <p>9 <b>that.</b></p> <p>10 Q. Do you remember what Detective Outlaw may have said</p> <p>11 about the man in the line-up other than the fact that</p> <p>12 he was arrested across the street from you? Did he</p> <p>13 say anything else about that particular man that led</p> <p>14 Outlaw to believe that was the person who robbed you?</p> <p>15 A. <b>He just kind of indicated that that was him, the one I</b></p> <p>16 <b>picked out in the line-up.</b></p> <p>17 Q. Now, the room where you actually looked at these photo</p> <p>18 books, how big was it compared to the room we're in</p> <p>19 now, bigger or smaller?</p> <p>20 A. <b>It's about this size, I guess.</b></p> <p>21 Q. About this size?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. This conference room being --</p> <p>24 MR. VANES: Do you guys know what it is?</p> <p>25 MS. O'HALLORAN: Ten by fifteen, I'd guess.</p> | <p style="text-align: right;">64</p> <p>1 police officers involved in any fashion with books in</p> <p>2 the room that's the size of this deposition room?</p> <p>3 A. <b>There was a woman police officer, I believe.</b></p> <p>4 Q. Some female police officer was involved in some</p> <p>5 fashion --</p> <p>6 A. <b>Yeah.</b></p> <p>7 Q. -- in this process?</p> <p>8 A. <b>Yes.</b></p> <p>9 Q. Okay. Now, you told Mr. Watson that as far as you can</p> <p>10 recall now what we're calling the physical line-up</p> <p>11 where you're seeing not a picture but a person, that's</p> <p>12 what we mean by a physical line-up, okay, that you</p> <p>13 recall only seeing one person in that physical</p> <p>14 line-up, correct?</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. You started to tell Mr. Watson, and you correct me if</p> <p>17 I'm wrong, --</p> <p>18 A. <b>Okay.</b></p> <p>19 Q. -- that it's possible that you only essentially</p> <p>20 focused on that one person and there may have been</p> <p>21 other people on it, but they didn't catch your</p> <p>22 attention or you didn't pay attention to them or you</p> <p>23 don't remember if they were even there; am I right?</p> <p>24 A. <b>You're right. I just know it was just him, it just</b></p> <p>25 <b>seemed like it was just him. I don't remember looking</b></p> |

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1 **at anyone else.**

2 Q. Okay. Because there are pictures that were

3 introduced, I think, at the trial showing Mr. Donald

4 in a line-up with about five other people. Okay? And

5 I guess what we need to know from you is: Did you at

6 any point see a line-up with a total of about six

7 people and just not remember the other people or did

8 you see just one or are you not sure either way?

9 A. **I think I just saw one.**

10 Q. Okay. Now, you had done some work looking through

11 some books and you fingered one of them and brought it

12 to the attention of the police, right?

13 A. **Yes.**

14 Q. And when you had done at least the initial pointing,

15 the other woman, did she get off her chair to come

16 over and look?

17 A. **She leaned over.**

18 Q. How far was she from you?

19 A. **She sat right here (indicating).**

20 Q. Okay. There is a chair you're sitting in now. Why

21 don't you adjust the other chair to how close the

22 other woman was?

23 A. **(Witness indicating).**

24 Q. Could you reach out and touch the other woman?

25 A. **Yes.**

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1 Q. Did you actually see her lean over and look at what

2 you were pointing at?

3 A. **Yes.**

4 Q. And her reaction to that was what?

5 A. **She started crying and she was nodding her head.**

6 Q. Nodding her head up and down or sideways?

7 A. **Like, you know, she was just looking and she just**

8 **started crying.**

9 Q. Did she nod her head as a yes or did she nod her head

10 as a no? When you say nod, you mean generally up and

11 down yes?

12 A. **Up and down, yes, but she also was like -- she was not**

13 **sure as well.**

14 Q. Okay. What gave you that impression?

15 A. **Because she was just like this (indicating). I don't**

16 **know. She was crying and I didn't look at her that**

17 **much, but she was crying.**

18 Q. Did you sense she looked over or did you actually see

19 her lean over?

20 A. **No, she leaned over.**

21 Q. And you were pointing to one particular picture at

22 that time?

23 A. **Yes.**

24 Q. Now, I think you indicated that at some point after

25 the robbery you were returning home with a dog?

67

1 A. **Yes.**

2 Q. Was this meant to be a guard dog?

3 A. **Yes.**

4 Q. The dog was in the car and you pulled up to near your

5 house?

6 A. **Yes.**

7 Q. Do you remember how close it was to your house?

8 A. **I only had to turn the corner and I would have been**

9 **maybe five or six houses down.**

10 Q. When you saw this man, your immediate reaction was

11 that's the person who robbed me?

12 A. **Yes.**

13 Q. So you called the police so they could arrest the

14 person you saw on the corner?

15 A. **Yes.**

16 Q. From that point on, did you ever go back and live in

17 your house?

18 A. **No.**

19 Q. Where did you move to, your mom's?

20 A. **Yes.**

21 Q. From your mom's you moved to where?

22 A. **Indianapolis.**

23 Q. You were actually living in Indianapolis at the time

24 this case came up in court for a jury trial, right?

25 A. **Yes.**

68

1 MR. VANES: Do you have the exhibits?

2 Q. BY MR. VANES: I think Mr. Watson showed you these,

3 these are some notes. Now, I know you don't -- or at

4 least you did not then know people by titles. Okay?

5 But that document purports to be notes taken by

6 someone of a phone conversation with you just before

7 the trial that occurred in this case. Let me start

8 here: Do you remember having any phone conversations

9 with any officials of any kind before you came here

10 and actually testified at the trial?

11 A. **No.**

12 Q. Now, there is a phone number in here that purports to

13 be or it looks like it's your phone number. It's an

14 area code 317 and above it is the word -- just above

15 it to the right is the word Indianapolis. You said

16 you were living in Indianapolis at the time?

17 A. **Yes.**

18 Q. The area code for Indianapolis is, of course, 317,

19 right?

20 A. **Yes.**

21 Q. Going back 21 years here or so, do you remember was

22 that a phone number you had in Indianapolis at the

23 time, does that ring any bells now?

24 A. **Not really.**

25 Q. Okay. Down toward the bottom of Page 1 of Exhibit 3,



69

1 I'll quote this: "Can't swear in court that the D" --  
 2 Delta, the Greek D -- "is the person" followed by  
 3 "face looks fuller in line-up (larger build) than  
 4 robber." As you looked at the line-up, is that  
 5 accurate that the person in the line-up had a larger  
 6 build and a bigger face?  
 7 **A. Yes.**  
 8 **Q.** But you don't remember saying that to anyone before  
 9 the trial?  
 10 **A. Right.**  
 11 **Q.** Okay. The business about can't swear in court that  
 12 the defendant is the person, is that a true reflection  
 13 of what your state of mind was at the time of the  
 14 trial? In other words, was that accurate that before  
 15 going to trial you could not swear that the person in  
 16 the line-up was the one who robbed you?  
 17 **A. Correct.**  
 18 **Q.** Okay. So both of the statements in that are true,  
 19 they're true now?  
 20 **A. Yes.**  
 21 **Q.** They were true back at the time of the trial, correct?  
 22 **A. Yes.**  
 23 **Q.** You don't remember actually saying that to anybody  
 24 though?  
 25 **A. No.**

70

1 **Q.** Do you even remember that phone conversation?  
 2 **A. I don't remember the phone conversation, but I do**  
 3 **remember telling Outlaw at the line-up that he's**  
 4 **bigger.**  
 5 **Q.** Let's go through this. Is it possible you said that  
 6 to someone, but it wasn't Outlaw, it was the person  
 7 who called you on the phone just before the trial? Is  
 8 it possible you said it to two separate people, do you  
 9 know?  
 10 **A. I don't know.**  
 11 **Q.** Okay. Now, you don't know -- you said you did not  
 12 know people by official titles at that point in time?  
 13 **A. Right.**  
 14 **Q.** Do you remember that actually it was a woman lawyer  
 15 who questioned you for the trial, does that ring any  
 16 bells?  
 17 **A. No.**  
 18 **Q.** One of the things we talked about yesterday was that  
 19 how important it was that at this stage you not say  
 20 something just to make me happy, you not say something  
 21 just to make the prosecutors here in this deposition  
 22 room happy, all we're looking for is a straight answer  
 23 regardless of who it helps and who it hurts, correct?  
 24 **A. Correct.**  
 25 **Q.** With that in mind, the person you saw in that line-up,

71

1 was that the person who robbed you, yes, no, or I'm  
 2 not sure?  
 3 **A. No.**  
 4 **MR. WATSON:** I'm sorry to interrupt, but which  
 5 line-up?  
 6 **Q. BY MR. VANES:** The in person meaning the physical  
 7 line-up where you were actually seeing a body?  
 8 **A. Right. It wasn't him. It was no.**  
 9 **Q.** Okay. Once again, keeping in mind we're not asking  
 10 you to please any of us here, just tell it as you see  
 11 it. The person you saw on the street, did that appear  
 12 to you to be the person who robbed you?  
 13 **A. Yes.**  
 14 **MR. VANES:** Nothing else.  
 15 **MR. WATSON:** That prompts just a few follow-ups.  
 16 **R E D I R E C T E X A M I N A T I O N**  
 17 **BY MR. WATSON:**  
 18 **Q.** The Caucasian lady in the room with the photo books,  
 19 did she actually say that she wasn't sure or was it  
 20 the way she was acting?  
 21 **A. Just the way she was acting.**  
 22 **Q.** Did she say anything at all about it?  
 23 **A. No, not that I can remember.**  
 24 **Q.** When I say did she say anything at all about it, I  
 25 mean when looking at the photo did she express any of

72

1 her thoughts about what she was looking at that you  
 2 recall?  
 3 **A. I don't think so.**  
 4 **Q.** All right. Mr. Vanes asked you a few questions about  
 5 Detective Outlaw. You've testified already that it  
 6 was after viewing the in-person line-up you told him  
 7 that the person in the line-up was too big and he,  
 8 according to your testimony, said some things meant to  
 9 influence you to say, no, that is the guy. Is that  
 10 all correct?  
 11 **A. Yes.**  
 12 **Q.** And you said that it was at that time he made  
 13 reference to the fact that he was arrested across the  
 14 street and other facts that you believe were meant to  
 15 suggest to you that they had the right guy, correct?  
 16 **A. Yes.**  
 17 **Q.** Was there, besides that time right after the in-person  
 18 line-up, any other times that you spoke with Outlaw  
 19 along those lines? Was there any further conversation  
 20 between you and him where you suggested to him that  
 21 you didn't think the person in the in-person line-up  
 22 was the right person besides that day?  
 23 **A. I don't believe so.**  
 24 **Q.** And besides that day right after doing the in-person  
 25 line-up, was there any other times that you recall

|  |   |
|--|---|
| <p style="text-align: right;">73</p> <p>1 where Outlaw tried to influence you to say that that</p> <p>2 was the person?</p> <p>3 <b>A. Somewhere closer to the trial, I believe.</b></p> <p>4 <b>Q.</b> Can you give me any specifics about that conversation?</p> <p>5 <b>A. No.</b></p> <p>6 <b>Q.</b> Any other times besides that?</p> <p>7 <b>A. I'm not sure.</b></p> <p>8 <b>Q.</b> Okay. So to summarize that a little bit, you believe</p> <p>9 that on two separate occasions the detective tried to</p> <p>10 suggest to you that the person you picked out of the</p> <p>11 line-up was, in fact, the right person?</p> <p>12 <b>A. Correct.</b></p> <p>13 <b>Q.</b> And one of those was right after viewing the in-person</p> <p>14 line-up and one of those, the other occasion, was</p> <p>15 closer to trial?</p> <p>16 <b>A. Correct.</b></p> <p>17 <b>Q.</b> Were there any other occasions that you recall by</p> <p>18 Detective Outlaw or anybody else where people tried to</p> <p>19 suggest to you that they had the right person?</p> <p>20 <b>A. I can't remember that.</b></p> <p>21 <b>Q.</b> Was it ever like a threat by him or just him trying to</p> <p>22 influence you?</p> <p>23 <b>A. It wasn't a threat. It was more that he was</b></p> <p>24 <b>influencing me.</b></p> <p>25 <b>Q.</b> A reassurance that, yes, we arrested the right person?</p> | <p style="text-align: right;">75</p> <p>1 arrests following the trial that you're aware of?</p> <p>2 <b>A. Well, I was arrested once for a traffic ticket --</b></p> <p>3 <b>well, not a traffic ticket, but a \$14 check that</b></p> <p>4 <b>bounced and I paid it, but the state had took it up,</b></p> <p>5 <b>so --</b></p> <p>6 <b>Q.</b> Okay. Are you on any other medications? You</p> <p>7 mentioned medication for depression?</p> <p>8 <b>A. No. What does this have to do with the case?</b></p> <p>9 <b>Q.</b> I don't know because I don't know what you're on.</p> <p>10 <b>A. Oh, yes, I don't.</b></p> <p>11 <b>Q.</b> Are you still on medications for depression?</p> <p>12 <b>A. Yes, I am.</b></p> <p>13 <b>Q.</b> Do you have any other diagnoses other than depression?</p> <p>14 <b>A. Fibromyalgia.</b></p> <p>15 MS. O'HALLORAN: Okay.</p> <p>16 R E C R O S S - E X A M I N A T I O N</p> <p>17 BY MR. VANES:</p> <p>18 <b>Q.</b> Mr. Watson was asking about Detective Outlaw --</p> <p>19 Detective Outlaw's attempts to reassure you that they</p> <p>20 had arrested the right person. You recall that,</p> <p>21 right?</p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q.</b> Did you buy into or accept or tend to believe</p> <p>24 Detective Outlaw's reassurances?</p> <p>25 <b>A. I believed him.</b></p>   |
| <p style="text-align: right;">74</p> <p>1 <b>A. Correct.</b></p> <p>2 <b>Q.</b> And based on what you're saying here today, is it fair</p> <p>3 for me to say that you never indicated to any police</p> <p>4 officer that they had the right person in that</p> <p>5 in-person line-up? Did you ever tell any police</p> <p>6 officer the person in the in-person line-up is the</p> <p>7 right guy?</p> <p>8 <b>A. No.</b></p> <p>9 <b>Q.</b> You told Detective Outlaw this guy's not the right</p> <p>10 body type, he's too big or something like that?</p> <p>11 <b>A. Correct.</b></p> <p>12 <b>Q.</b> BY MS. O'HALLORAN: Did you have anything happen in</p> <p>13 your life after the trial? Did you or a family member</p> <p>14 have any dealings with law enforcement?</p> <p>15 <b>A. No. What do you mean?</b></p> <p>16 <b>Q.</b> Do you have children?</p> <p>17 <b>A. Do I have children?</b></p> <p>18 <b>Q.</b> Yes.</p> <p>19 <b>A. Yes, I do.</b></p> <p>20 <b>Q.</b> Did any of your children have involvements with law</p> <p>21 enforcement after the trial, any arrests?</p> <p>22 <b>A. They had a driving ticket.</b></p> <p>23 <b>Q.</b> Is that all?</p> <p>24 <b>A. Yes.</b></p> <p>25 <b>Q.</b> Okay. So no one in your family had any convictions or</p>  | <p style="text-align: right;">76</p> <p>1 <b>Q.</b> You believed him.</p> <p>2 MR. VANES: Okay. Nothing else. The court</p> <p>3 reporter is going to type this up. Under the rules</p> <p>4 you would have the opportunity to actually review it</p> <p>5 to make sure that it's been taken down and is typed up</p> <p>6 as you said it here today. Okay? It might be a</p> <p>7 logistic nightmare doing that. If you were to insist</p> <p>8 on it -- how would it be done, mail it down there?</p> <p>9 COURT REPORTER: Typically she would come to our</p> <p>10 office in Munster, but being out of town if her</p> <p>11 attorney ordered a copy of the transcript, they could</p> <p>12 get it to her.</p> <p>13 MR. VANES: Okay. We'd have to mail it down and</p> <p>14 you'd have to proofread it and make sure that it got</p> <p>15 recorded correctly here today. Most people don't do</p> <p>16 that, most people say file it with the court once it's</p> <p>17 typed up, but it's your choice. It's called waiving</p> <p>18 signature. She can file it directly without your</p> <p>19 signature, you can waive it, or we can hold it and</p> <p>20 have you review it. It's your choice.</p> <p>21 THE DEPONENT: Okay. Do I have to say that now?</p> <p>22 MR. VANES: Yes, if you would. If you would let</p> <p>23 us know how to proceed because we need to know how to</p> <p>24 proceed.</p> <p>25 THE DEPONENT: I would like to sign it, I guess.</p> |

77

MR. VANES: Okay. You'll have to get it to me  
and I'll do some sort of Fed Ex magic and get it down  
to her for review.

FURTHER DEPONENT SAITH NOT  
\*\*\*\*\*

I, RHONDA FLEMING, do hereby state that I have  
read the foregoing transcript of the testimony given  
by me at my deposition on the 28th day of May, 2013,  
and that said transcript is a true and correct record  
of the testimony given by me at said deposition,  
except as may be indicated on the errata sheets, if  
any, attached hereto.

ERRATA SHEET(S) ATTACHED: \_\_\_\_\_ YES \_\_\_\_\_ NO

RHONDA FLEMING

SUBSCRIBED AND SWORN  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

Notary Public

My county of residence:

My commission expires:

78

C E R T I F I C A T E


I, MELISSA A. HILL, CSR and Notary Public for the  
State of Indiana, do hereby certify that there  
appeared before me deponent, RHONDA FLEMING, at the  
office of the Lake County Prosecutor's Office, 2293  
North Main Street, Crown Point, Indiana, on the 28th  
day of May, 2013, who was thereupon first duly sworn  
by me to testify the truth and nothing but the truth  
in response to questions propounded to said deponent  
at the taking of the foregoing deposition relating to  
the above-captioned cause now pending and undetermined  
in said court.

I further certify that I then and there reported  
in machine shorthand the testimony so given at said  
time and place, and that the testimony was then  
reduced to typewriting from my original shorthand  
notes, and that the foregoing typewritten transcript  
is a true and accurate record of said testimony given  
by said deponent at said time and place.

I further certify that I am not related by blood  
or marriage to any of the parties to said suit, nor am  
I an employee or any of the parties or of their  
attorneys or agents, nor am I interested in any way,  
financially or otherwise in the outcome of said  
litigation.

I further certify that signature was reserved.

Dated at Crown Point, Indiana, this 12th day of  
June, 2013.

  
MELISSA A. HILL, CSR, Notary Public  
ILLINOIS CSR NO. 084-004440

My commission expires:  
10/6/2014

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION**

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 38

## Plaintiff's Summary Judgment Response



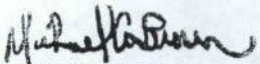
STATE OF INDIANA )  
 ) ss:  
COUNTY OF LAKE )

SUPERIOR COURT OF LAKE COUNTY  
CRIMINAL DIVISION  
CASE 45G01-9203-CF-00065

WILLIE T DONALD, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
STATE OF INDIANA, )  
 )  
Respondent. )

**RECEIVED**

JAN 28 2016

  
CLERK LAKE SUPERIOR COURT

**ORDER**

**01-27-16** The State of Indiana by Chief Deputy Prosecuting Attorney Barbara McConnell, files a motion to dismiss for the following reasons: The State of Indiana has insufficient evidence to prove the charges beyond a reasonable doubt. Motion to dismiss is granted. The Court setting of January 28, 2016 is vacated. The defendant is ordered released from custody *instantly*. The defendant is not to be returned to the Department of Correction. The clerk is directed to notify the defendant, Attorney Thomas Vanes and the Sheriff.

SO ORDERED: Salvador Vasquez, Judge. (jd/27)

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION**

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 39

## Plaintiff's Summary Judgment Response

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

WILLIE T. DONALD,  
Plaintiff,

v.

BRUCE OUTLAW, CARLA K. PYLE,  
as special Administrator of the ESTATE  
OF JOHN E. JELKS, JR., CITY OF  
KAREN HOWELL and THOM HOWELL,  
Defendants.

Case No. 2:17-cv-00032-JVB-PRC

**DEFENDANT, BRUCE OUTLAW'S SUPPLEMENTAL ANSWERS  
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant, Bruce Outlaw, by counsel, Ricardo A. Hall, and Kopka Pinkus Dolin PC and for his Answers to Plaintiff's First Set of Interrogatories states as follows:

3. Please identify all Complaints that have ever been made against any of the Individual Defendants relating to their roles as law enforcement officials, including but not limited to any and all internal affairs, intra- or inter- departmental, and citizen complaints alleging dishonest behavior, lying under oath, witness manipulation, improper behavior during interrogations or interviews, use of improperly suggestive, coercive, or torturous methods on suspects, arrestees, or witnesses, use of excessive force, false arrest, malicious prosecution, fabrication or planting of evidence, concealment of evidence, use of unduly suggestive visual or voice identification procedures, and lawsuits or administrative complaints filed in state or federal courts or agencies alleging police or prosecutorial misconduct. For each Complaint, please state: (a) the date of the Complaint; (b) a detailed description of the nature of the Complaint; (c) an identifying number of the Complaint; and (d) how the Complaint was resolved, including any discipline imposed in connection with the Complaint. If you do not possess an identifying number of a particular Complaint, please investigate and obtain it.

**Response:** In addition to "complaints" referenced in correspondence from counsel for plaintiff dated September 29, 2017, and matters reflected in Bruce Outlaw's supplemental discovery response served on September 20, 2018, defendant Outlaw would state that he was required to present before the Accident Review Board in connection with an automobile accident at some point in the 1990s. Moreover, defendant Outlaw states that he was required to reimburse the Gary Police Department for a shot gun that was stolen from his vehicle in the 1990s. Furthermore, defendant Outlaw states that he was at some point in the 1990s reprimanded for not wearing a hat outdoors.

5. Please state whether any of the Individual Defendants or any other agent, Investigator, and/or employee of the City of Gary involved in the Glen Park Robberies Investigation acted inconsistently with any of the policies, customs, or practices of the Gary Police Department at any time during the investigation or subsequent prosecution of Plaintiff for those crimes. If the answer is in the affirmative, please: (a) identify any particular policy, custom, or practice which, to your knowledge was violated; (b) describe the circumstances and manner in which said policy custom, or practice was violated; and (c) state whether any discipline resulted from that violation.

**Response:** Defendant Outlaw further states that he did not act inconsistently with any of the policies, customs, or practices of the Gary Police Department at any time during the investigation and prosecution of the crimes for which plaintiff was convicted.

6. Do you contend that Willie T. Donald perpetrated any of the Glen Park Robberies? If so, please provide the complete factual basis for your contention, including but not limited to a description of what, if any, physical evidence exists or ever existed connecting Mr. Donald to any of the crimes.

**Response:** Defendant Outlaw states that to the best of his recollection probable cause existed to arrest plaintiff for the subject crimes committed in 1992; and further that proper and sufficient evidence was presented at trial to support the jury's verdict. The facts and circumstances upon which defendant Outlaw's contention rests are contained in documents and materials which are already within plaintiff's possession, or which are equally accessible, including a transcript of trial proceedings in 1992.

9. If the answer to any of your responses to Plaintiff's First Set of Requests for Admission to All Defendants is anything other than an unqualified "Admit", please describe the complete factual basis for your position, and state with specificity every witness and/or piece of evidence (including Documents) that supports your position.

**Response:** Defendant Outlaw would refer plaintiff to information provided in defendant's supplemental answer to plaintiff's Interrogatory #6 hereinabove. Moreover, while defendant Outlaw recalls that John Jelks, deceased, would have arranged for an investigation and spoken with one or more representatives of the Goldblatts store where plaintiff reportedly worked at the time in question, defendant Outlaw does not recall any specific discussion with Officer Jelks, and Jelks would have been expected to put any information from said investigation into a written report to be incorporated into the records of the Gary Police Department.



14. Under oath, please identify every Communication that you had with any Person, including but not limited to Plaintiff and any of the Individual Defendants, Investigators, or employees of the City of Gary, about any of the allegations, events, or circumstances described in Plaintiff's Complaint, including but not limited to the Glen Park Robberies Investigation. For each such Communication, please: (a) provide a summary of the Communication; (b) identify when and with whom the Communications occurred; and (c) provide the date of the Communication. If you answer this Interrogatory by referring to Documents, please affirm under oath that the sum total of your Communications responsive to this Interrogatory is contained in the Documents that you reference. This Interrogatory includes Communications that were not memorialized in a police report

**Response:** Defendant Outlaw states that he does not recall any communication with the plaintiff, particularly after plaintiff would have been informed about his *Miranda* rights. Defendant Outlaw generally recalls that he would have talked with the following officers of the Gary Police Department about his investigation and case file associated with the subject crimes: Lt. Charlie Mitchell, Commander John Robbie, Joseph Starks, deceased, Lt. Lewis Thompson, and Clarence Hightower.

15. Please state with specificity each activity and investigative task that you participated in during the Glen Park Robberies Investigation. For each activity and task, please describe the Person who assigned you each task and the Person to whom you reported for each task. Please note that the scope of this Interrogatory includes all activity to investigate the Glen Park Robberies up to and including the present day. If you answer this Interrogatory by referring to Documents, please affirm under oath that the sum total of your participation in the Glen Park Robberies Investigation is described in the Documents that you reference.

**Response:** Defendant Outlaw states that he conducted and assisted officers with interviews, as well as the identification process; participated in lineup procedures; and solicited information about the subject crimes from the public through media sources.

17. For punitive damages purposes, please estimate your net financial worth. Please describe how that net worth has been calculated by providing a balance sheet of all assets greater than \$2,500 USD (including a description of any ownership of stock, mutual funds, real estate, etc.) and including all liabilities.

Please also provide an income statement for the five years prior to the filing of this complaint, including your annual salary and any income from any other source for those years.


**Response:** In addition to his previous response to this Interrogatory, defendant Outlaw states that he is willing to table the discussion relative to punitive damages.

**VERIFICATION**

I, Bruce Outlaw, state that I am above the age of majority, have personal knowledge of and am competent to testify to the above matters, and that these are true subject to the penalties of perjury.

  
\_\_\_\_\_  
Bruce Outlaw

Respectfully submitted,

By:   
\_\_\_\_\_  
Ricardo A. Hall (#19103-53)  
Attorney for the Defendant, Bruce Outlaw

KOPKA PINKUS DOLIN PC  
9801 Connecticut Drive  
Crown Point, IN 46307-1000  
Telephone: (219) 794-1888  
Facsimile: (219) 794-1892

Certificate of Service

I hereby certify that on the 2nd day of November, 2018, service of a true and complete copy of the attached pleadings and papers was made upon all counsel of record by depositing same in the United States mail with sufficient first class postage affixed.

Scott Drury/D. Samuel Heppell  
John Loevy/Arthur Loevy  
Elizabeth C. Wang  
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Ricardo A. Hall

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

|  |   |                             |
|--|---|-----------------------------|
| WILLIE T. DONALD,                      | ) |                             |
|  | ) | No. 2:17-CV-00032-TLS       |
| Plaintiff,                             | ) |                             |
|  | ) | Judge Theresa L. Springmann |
| v.                                     | ) |                             |
|  | ) |                             |
| BRUCE OUTLAW, CARLA K. PYLE, as        | ) |                             |
| special administrator of the ESTATE OF | ) |                             |
| JOHN E. JELKS, JR., CITY OF GARY,      | ) | JURY TRIAL DEMANDED         |
| and other as-yet unknown employees     | ) |                             |
| of the City of Gary,                   | ) |                             |
|  | ) |                             |
| Defendants.                            | ) |                             |

# Exhibit 40

## Plaintiff's Summary Judgment Response





## TABLE OF ORGANIZATION

### OFFICE OF THE CHIEF OF POLICE AND DEPUTY CHIEF OF POLICE

- A. Legal Advisor
- B. Supervisor of Operations
- C. Police Community Relations Office
- D. Internal Affairs Division
- E. Administrative Unit
- F. Criminal Justice Planning and Research
- G. Religious Counseling Services

### BUREAU OF UNIFORM SERVICES

- A. Patrol Division
  - 1. Supervisors of Patrol
- B. Traffic/Tactical Division
- C. Aviation Unit
- D. Marine Patrol Unit
- E. Auxiliary Police Section
- F. Motor Transport Division

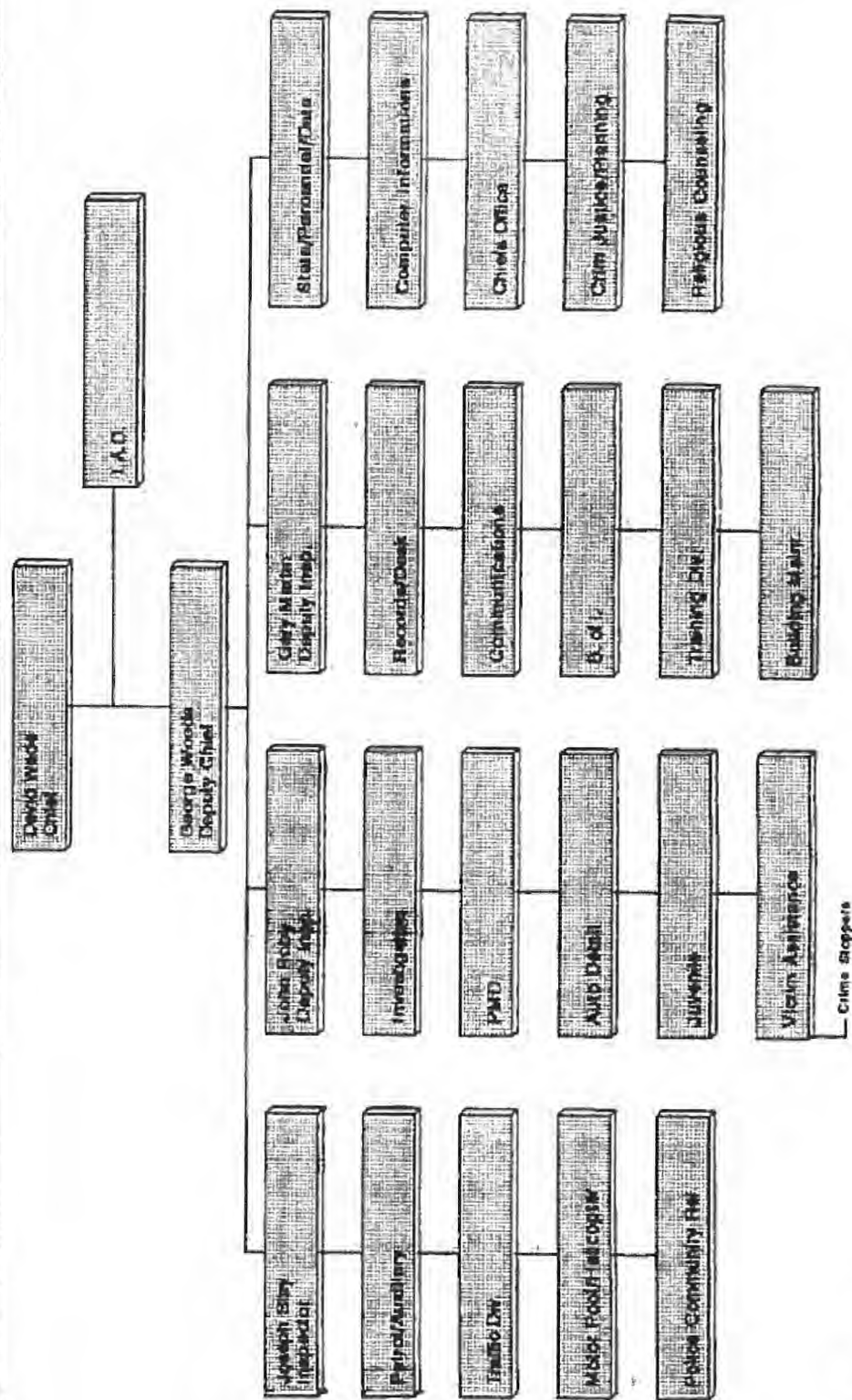


# TABLE OF CONTENTS

|   |     |
|---|-----|
| GENERAL ORDER 01-92   |     |
| USE OF DEADLY FORCE AND HANDLING OF FIREARMS . . . . .                  | 11  |
| GENERAL ORDER 01.1-92   |     |
| AUTHORIZED FIREARMS & AMMUNITION . . . . .                              | 12  |
| GENERAL ORDER 01.2-92   |     |
| FAILURE TO QUALIFY WITH DEPARTMENTAL WEAPON . . . . .                   | 14  |
| GENERAL ORDER 01.3-92   |     |
| POLICY ON POSSESSION OF GUNS BY CIVILIAN EMPLOYEES . . . . .            | 15  |
| GENERAL ORDER 01.4-92   |     |
| REMOVAL OF FIREARMS FROM INTOXICATED MEMBER . . . . .                   | 16  |
| GENERAL ORDER 01.5-92   |     |
| AUTHORIZED SHOTGUN AND AMMUNITION . . . . .                             | 16A |
| GENERAL ORDER 01.6-92   |     |
| FIREARMS REVIEW BOARD . . . . .   | 16C |
| GENERAL ORDER 02-92   |     |
| PROCEDURES FOR PROCESSING SUBPOENAS . . . . .                           | 17  |
| GENERAL ORDER 02.1-92   |     |
| MEMBERS TO APPEAR IN COURT 12 MIDNIGHT TO 8 A.M. TOUR OF DUTY . . . . . | 19  |
| GENERAL ORDER 02.2-92   |     |
| DRESS CODE FOR COURT APPEARANCES . . . . .                              | 20  |
| GENERAL ORDER 03-92   |     |
| RELIGIOUS COUNSELING SERVICE . . . . .                                  | 21  |
| GENERAL ORDERS 04-92  |     |
| SUGGESTIONS OR GRIEVANCES . . . . .                                     | 22  |
| GENERAL ORDERS 05-92  |     |
| NEWS RELEASES . . . . .   | 23  |
| GENERAL ORDER 06-92   |     |
| ASSIGNMENT OF MARKED AND UNMARKED DEPARTMENT VEHICLES . . . . .         | 24  |
| GENERAL ORDER 07-92   |     |
| SEARCH WARRANTS . . . . .   | 25  |

# Gary Police Department

## Organization Chart



000004

Dec 10 1991



**TABLE OF ORGANIZATION**  
**Continued**

**BUREAU OF INVESTIGATIVE SERVICES**

- A. Detective Division**
  - 1. Victim Assistance
  - 2. Project Outreach
- B. Public Morals Division**
- C. Juvenile Aid Division**
- D. Auto Detail Division**

**BUREAU OF SUPPORTIVE SERVICES**

- A. Front Desk**
- B. Training Division**
- C. Identification Section**
- D. Records Section**
- E. Correctional Service Section**
- F. Property Clerk Unit**
- G. Building Maintenance**
- H. Communications Division**
  - 1. Computer Information Services
  - 2. Warrants

## TABLE OF CONTENTS

|   |    |
|---|----|
| GENERAL ORDER 01-92   |    |
| USE OF DEADLY FORCE AND HANDLING OF FIREARMS . . . . .        | 11 |
| GENERAL ORDER 01.1-92   |    |
| AUTHORIZED FIREARMS & AMMUNITION . . . . .                    | 12 |
| GENERAL ORDER 01.2-92   |    |
| FAILURE TO QUALIFY WITH DEPARTMENTAL WEAPON . . . . .         | 14 |
| GENERAL ORDER 01.3-92   |    |
| POLICY ON POSSESSION OF GUNS BY CIVILIAN EMPLOYEES . .        | 15 |
| GENERAL ORDER 01.4-92   |    |
| REMOVAL OF FIREARMS FROM INTOXICATED MEMBER . . . . .         | 16 |
| GENERAL ORDER 02-92   |    |
| PROCEDURES FOR PROCESSING SUBPOENAS . . . . .                 | 17 |
| GENERAL ORDER 02.1-92   |    |
| MEMBERS TO APPEAR IN COURT 12 MIDNIGHT TO 8 A.M. TOUR OF DUTY |    |
| . . . . .   | 19 |
| GENERAL ORDER 02.2-92   |    |
| DRESS CODE FOR COURT APPEARANCES . . . . .                    | 20 |
| GENERAL ORDER 03-92   |    |
| RELIGIOUS COUNSELING SERVICE . . . . .                        | 21 |
| GENERAL ORDERS 04-92  |    |
| SUGGESTIONS OR GRIEVANCES . . . . .                           | 22 |
| GENERAL ORDERS 05-92  |    |
| NEWS RELEASES . . . . .                                       | 23 |
| GENERAL ORDER 06-92   |    |
| ASSIGNMENT OF MARKED AND UNMARKED DEPARTMENT VEHICLES . . .   | 24 |
| GENERAL ORDER 07-92   |    |
| SEARCH WARRANTS . . . . .                                     | 25 |
| GENERAL ORDER 07.1-92   |    |
| PROCEDURES FOR SEARCH WARRANTS . . . . .                      | 26 |
| GENERAL ORDER 08-92   |    |
| SICK LEAVE POLICY . . . . .                                   | 35 |
| GENERAL ORDER 08.1-92   |    |
| VACATION SCHEDULES . . . . .                                  | 39 |

|  |    |
|--|----|
| GENERAL ORDER 08.2-92                          |    |
| DEATH IN FAMILY LEAVE . . . . .                | 40 |
| GENERAL ORDER 08.3-92                          |    |
| MATERNITY LEAVE . . . . .                      | 41 |
| GENERAL ORDER 08.4-92                          |    |
| MEDICAL POLICY                                 |    |
| SKIN DISORDER/FACIAL BEARDS . . . . .          | 43 |
| GENERAL ORDER 08.5-92                          |    |
| ON THE JOB INJURIES . . . . .                  | 44 |
| GENERAL ORDER 08.6-92                          |    |
| DUE DAY PROCEDURE . . . . .                    | 45 |
| GENERAL ORDER 09-92                            |    |
| TO SAFEGUARD EVIDENCE AND DETAIN WITNESSES FOR |    |
| CRIME SCENE PROCEDURE . . . . .                | 47 |
| GENERAL ORDER 09.1-92                          |    |
| PROCEDURE FOR EVIDENCE/PROPERTY . . . . .      | 49 |
| GENERAL ORDER 10-92                            |    |
| COMMAND DISCIPLINE . . . . .                   | 51 |
| GENERAL ORDER 11-92                            |    |
| STANDARD OPERATIONAL PROCEDURE RELATIVE TO     |    |
| ALL POLICE VEHICLES . . . . .                  | 57 |
| GENERAL ORDER 12-92                            |    |
| FAIR LABOR STANDARDS ACT . . . . .             | 65 |
| GENERAL ORDER 12.1-92                          |    |
| SWORN PERSONNEL TIME SHEET . . . . .           | 67 |
| GENERAL ORDER 12.2-92                          |    |
| OVERTIME . . . . .                             | 68 |
| GENERAL ORDER 12.3-92                          |    |
| OVERTIME . . . . .                             | 69 |
| GENERAL ORDER 12.4-92                          |    |
| OVERTIME GUIDELINES . . . . .                  | 70 |
| GENERAL ORDER 12.5-92                          |    |
| SUSPENSION OF OVERTIME PRIVILEGES . . . . .    | 72 |



|  |    |
|--|----|
| GENERAL ORDER 13-92<br>WATCH COMMANDER'S DUTIES AND RESPONSIBILITIES . . . . .   | 73 |
| GENERAL ORDER 14-92<br>PROPOSED PLAN FOR POLICE PROTECTION FOR THE CITY OF GARY IN THE<br>EVENT OF A JOB ACTION BY SWORN PERSONNEL OF DEPARTMENT . . | 76 |
| GENERAL ORDER 15-92<br>ACCIDENT REVIEW BOARD . . . . .   | 80 |
| GENERAL ORDER 16-92<br>PROCEDURE - LOST OR STOLEN LICENSE PLATES . . . . .   | 82 |
| GENERAL ORDER 17-92<br>COMMUNICATIONS ROOM PROCEDURES . . . . .  | 83 |
| GENERAL ORDER 17.1-92<br>COMMUNICATIONS PROCEDURE<br>FIELD OFFICER/RADIO DISPATCHER . . . . .  | 87 |
| GENERAL ORDER 17.2-92<br>DETAIL ASSIGNMENT - COMMUNICATIONS . . . . .  | 89 |
| GENERAL ORDER 17.3-92<br>IDACS - WANTED FILES VALIDATION PROCEDURES . . . . .  | 90 |
| GENERAL ORDER 18-92<br>TELE-SERVICE TECHNICIAN . . . . .   | 92 |
| GENERAL ORDER 19-92<br>EFFECTIVE DATA QUALITY CONTROL . . . . .  | 94 |
| GENERAL ORDER 19.1-92<br>DATA ENTRY PROCEDURES FOR ARRESTED INDIVIDUALS . . . . .  | 95 |
| GENERAL ORDER 19.2-92<br>DATA ENTRY PROCEDURES FOR ARRESTED JUVENILES . . . . .  | 96 |
| GENERAL ORDER 20-92<br>BONDSMAN PROCEDURES . . . . .   | 97 |
| GENERAL ORDER 21-92<br>GARY POLICE LEGAL ADVISOR . . . . .   | 98 |



|  |            |
|--|------------|
| <b>GENERAL ORDER 22-92</b>   |            |
| <b>LOSS OF DEPARTMENT ISSUED EQUIPMENT . . . . .</b>               | <b>101</b> |
| <br><b>GENERAL ORDER 23-92</b>                                     |            |
| <b>THE CITY OF GARY'S</b>  |            |
| <b>DRUG-FREE WORKPLACE POLICY . . . . .</b>                        | <b>102</b> |
| <br><b>GENERAL ORDER 23.1-92</b>                                   |            |
| <b>DRUG SCREENING OF PROBATIONARY OFFICERS. . . . .</b>            | <b>112</b> |
| <br><b>GENERAL ORDER 24-92</b>                                     |            |
| <b>DOMESTIC VIOLENCE POLICY. . . . .</b>                           | <b>113</b> |
| <br><b>GENERAL ORDER 25-92</b>                                     |            |
| <b>FINGERPRINTING AND PHOTOGRAPHING . . . . .</b>                  | <b>117</b> |
| <br><b>GENERAL ORDER 26-92</b>                                     |            |
| <b>CONFISCATED MOTOR VEHICLES . . . . .</b>                        | <b>119</b> |
| <br><b>GENERAL ORDER 27-92</b>                                     |            |
| <b>RIDING IN SQUAD CARS . . . . .</b>                              | <b>122</b> |
| <br><b>GENERAL ORDER 28-92</b>                                     |            |
| <b>MOTOR TRANSPORT DIVISION . . . . .</b>                          | <b>123</b> |
| <br><b>GENERAL ORDER 28.1-92</b>                                   |            |
| <b>MOTOR TRANSPORT'S RULES AND REGULATIONS . . . . .</b>           | <b>124</b> |
| <br><b>GENERAL ORDER 29-92</b>                                     |            |
| <b>POLICE DEPARTMENTAL RECOGNITION . . . . .</b>                   | <b>128</b> |
| <br><b>GENERAL ORDER 30-92</b>                                     |            |
| <b>REGULATIONS FOR UNIFORM DRESS FOR SWORN PERSONNEL . . . . .</b> | <b>130</b> |
| <br><b>GENERAL ORDER 30.1-92</b>                                   |            |
| <b>DRESS CODE - GROOMING . . . . .</b>                             | <b>139</b> |
| <br><b>GENERAL ORDER 30.2-92</b>                                   |            |
| <b>DRESS CODE - PLAIN CLOTHES . . . . .</b>                        | <b>144</b> |

|   |            |
|---|------------|
| <b>GENERAL ORDER 31-92</b>  |            |
| <b>ESTABLISHMENT OF THE BUREAU OF UNIFORM SERVICES . . . . .</b>  | <b>147</b> |
| <b>GENERAL ORDER 31.1-92</b>  |            |
| <b>DUTIES/SUPERVISOR PATROL BUREAU OF UNIFORM SERVICES . . . . .</b>  | <b>148</b> |
| <b>GENERAL ORDER 31.2-92</b>  |            |
| <b>DEPLOYMENT OF PERSONNEL . . . . .</b>  | <b>151</b> |
| <b>GENERAL ORDER 31.3-92</b>  |            |
| <b>MARINE PATROL UNIT . . . . .</b>   | <b>153</b> |
| <b>GENERAL ORDER 31.4-92</b>  |            |
| <b>AUXILIARY POLICE SECTION . . . . .</b>   | <b>156</b> |
| <br><b>GENERAL ORDER 32-92</b>  |            |
| <b>PLAINCLOTHES OFFICER IDENTIFICATION . . . . .</b>  | <b>156</b> |
| <br><b>GENERAL ORDER 33-92</b>  |            |
| <b>ESTABLISHMENT OF THE PUBLIC MORALS DIVISION . . . . .</b>  | <b>157</b> |
| <br><b>GENERAL ORDER 34-92</b>  |            |
| <b>INFORMANTS IN UNDERCOVER OPERATIONS . . . . .</b>  | <b>158</b> |
| <br><b>GENERAL ORDER 35-92</b>  |            |
| <b>EVIDENCE AND PROPERTY HANDLING . . . . .</b>   | <b>162</b> |
| <br><b>GENERAL ORDER 36-92</b>  |            |
| <b>DUTIES AND RESPONSIBILITIES OF THE COMMANDING OFFICER OF<br/>THE TECHNICAL SERVICE DIVISION . . . . .</b>                | <b>168</b> |
| <br><b>GENERAL ORDER 37-92</b>  |            |
| <b>TRANSPORTATION FOR PSYCHIATRIC PATIENTS . . . . .</b>  | <b>170</b> |
| <b>GENERAL ORDER 37.1-92</b>  |            |
| <b>TRANSPORTATION FOR PSYCHIATRIC PATIENTS BY<br/>    GARY FIRE DEPARTMENT ESCORTED BY GARY POLICE DEPARTMENT . . . . .</b> | <b>171</b> |
| <br><b>GENERAL ORDER 38-92</b>  |            |
| <b>CORRECTIONAL SERVICES SECTION . . . . .</b>  | <b>174</b> |
| <b>GENERAL ORDER 38.1-92</b>  |            |
| <b>CODE OF ETHICS - CORRECTION SERVICE PERSONNEL . . . . .</b>  | <b>180</b> |

|   |     |
|---|-----|
| GENERAL ORDER 38.2-92   |     |
| RULES AND PROCEDURES FOR CORRECTIONAL OFFICERS<br>(WARDENS AND MATRONS) . . . . . | 182 |
| GENERAL ORDER 38.3-92   |     |
| DUTIES OF CORRECTION OFFICER UNUSUAL OCCURRENCE . . . . .                         | 184 |
| GENERAL ORDER 38.4-92   |     |
| WARDENS PHOTOGRAPHING AND FINGERPRINTING OF PRISONERS . . . . .                   | 188 |
| GENERAL ORDER 38.5-92   |     |
| VISITING CLERGYMEN - CORRECTION FACILITY . . . . .                                | 187 |
| GENERAL ORDER 38.6-92   |     |
| CORRECTIONAL SERVICES SECTION . . . . .   | 189 |
| GENERAL ORDER 38.7-92   |     |
| JAIL STANDARD OPERATING PROCEDURES . . . . .                                      | 190 |
| GENERAL ORDER 39-92   |     |
| DISPOSAL OF NARCOTIC RELATED PROPERTY/CONTRABAND, FIREWORKS AND<br>ETC. . . . .   | 192 |
| GENERAL ORDER 40-92   |     |
| BOOKING OF PRISONERS BY ARRESTING OFFICERS . . . . .                              | 195 |
| GENERAL ORDER 40.1-92   |     |
| BOOKING PROCEDURES . . . . .  | 197 |
| GENERAL ORDER 41-92   |     |
| PROCEDURE FOR EVIDENCE/PROPERTY . . . . .   | 198 |
| GENERAL ORDER 42-92   |     |
| VEHICLE INSPECTIONS . . . . .   | 200 |
| GENERAL ORDER 42.1-92   |     |
| VEHICLE INSPECTION DESIGNATION . . . . .  | 201 |
| GENERAL ORDER 42.2-92   |     |
| MOTOR VEHICLE INSPECTION . . . . .  | 202 |
| GENERAL ORDER 42.3-92   |     |
| POLICE INSPECTION FOR OUT OF STATE VEHICLES, NEW RESIDENT<br>. . . . .            | 203 |



|  |            |
|--|------------|
| <b>GENERAL ORDER 43-92</b>                                   |            |
| <b>PROCEDURES FOR EMERGENCY INCIDENTS . . . . .</b>          | <b>204</b> |
| <b>GENERAL ORDER 43.1-92</b>                                 |            |
| <b>AIRCRAFT DISASTERS . . . . .</b>                          | <b>205</b> |
| <b>GENERAL ORDER 43.2-92</b>                                 |            |
| <b>TRAIN DISASTERS . . . . .</b>                             | <b>207</b> |
| <b>GENERAL ORDER 43.3-92</b>                                 |            |
| <b>BUILDING COLLAPSE. . . . .</b>                            | <b>208</b> |
| <b>GENERAL ORDER 43.4-92</b>                                 |            |
| <b>FIRE . . . . .</b>  | <b>211</b> |
| <b>GENERAL ORDER 43.5-92</b>                                 |            |
| <b>BOMB THREATS/EXPLOSIONS . . . . .</b>                     | <b>213</b> |
| <b>GENERAL ORDER 43.6-92</b>                                 |            |
| <b>DANGEROUS CONDITIONS . . . . .</b>                        | <b>217</b> |
| <b>GENERAL ORDER 43.7-92</b>                                 |            |
| <b>GAS LEAKS . . . . .</b>                                   | <b>219</b> |
| <b>GENERAL ORDER 43.8-92</b>                                 |            |
| <b>DAMAGED LIVE WIRES . . . . .</b>                          | <b>221</b> |
| <b>GENERAL ORDER 43.9-92</b>                                 |            |
| <b>WATER LEAKS . . . . .</b>                                 | <b>223</b> |
| <b>GENERAL ORDER 43.10-92</b>                                |            |
| <b>RADIOACTIVE/HAZARDOUS MATERIALS INCIDENTS . . . . .</b>   | <b>225</b> |
| <b>GENERAL ORDER 43.11-92</b>                                |            |
| <b>OPERATIONAL PROCEDURES/RADIATION INCIDENTS . . . . .</b>  | <b>227</b> |
| <b>GENERAL ORDER 43.12-92</b>                                |            |
| <b>TABLE OF ISOLATION AND EVACUATION DISTANCES . . . . .</b> | <b>229</b> |
| <br><b>GENERAL ORDER 44-92</b>                               |            |
| <b>CANINE PATROL . . . . .</b>                               | <b>231</b> |
| <br><b>GENERAL ORDER 45-92</b>                               |            |
| <b>SEXUAL HARASSMENT . . . . .</b>                           | <b>238</b> |
| <br><b>GENERAL ORDER 46-92</b>                               |            |
| <b>STRIP SEARCHES . . . . .</b>                              | <b>241</b> |



**GENERAL ORDER 01-92  
USE OF DEADLY FORCE AND HANDLING OF FIREARMS**

**I. PURPOSE**

The purpose of this order is to provide Gary Police Department officers with departmental policy concerning the use of deadly force and the handling of firearms.

**II. LEGAL REFERENCE**

INDIANA CODE SECTION 35-41-3-3-(b) (As modified by this policy)

**DEFINITIONS**

"Deadly force" means force that creates a substantial risk for use by the Gary Police Department.

"Firearm" shall mean any handgun, shotgun, or rifle authorized for use by the Gary Police Department.

**III. POLICY ON THE USE OF FIREARMS**

A. It is crucial that Gary Police Department officers exhaust all reasonable means before resorting to the use of a firearm. Deadly force shall be considered as a last resort rather than an alternative. Deadly force shall never be used on mere suspicion. The safety of citizens and fellow officers shall always be a consideration in any decision to use a firearm.

**B. Use of Reasonable Force and Deadly Force.**

1. Officers are justified in using reasonable force if he reasonably believe that force is necessary to effect a lawful arrest.
2. An officer is justified to using Deadly Force:
  - a. To prevent serious bodily injury to himself or a third person or the commission of a forcible felony.
  - b. An officer may use Deadly Force to prevent the escape of a Felon only where:

The officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or others.

C. Prohibited use and handling of firearms by officers.

1. Officers are prohibited from firing warning shots.
2. Officers shall not fire into crowds.
3. Generally officers are prohibited from firing through doors, windows, openings or into buildings, unless the person is clearly visible.
4. Discharging a firearm from or at a moving vehicle is prohibited unless the occupants of the other vehicle are using deadly physical force against the officers or another by means other than the vehicle.
5. Officers shall not fire in areas heavily populated by citizens on foot or in vehicles, except to prevent death or serious injury to the officer or other person(s).
6. Officers shall not draw, flaunt, or otherwise display a firearm except in strict compliance with the line of duty and departmental policy.
7. Drawing and display of firearms: The policy of this Department permits the drawing of firearms when an officer, in the exercise of sound judgement, has reason to fear for his own personal safety and/or the safety of others (this includes, but is not limited to, the search of a building.)

D. All officers upon discharging his/her firearms shall submit a written report to his/her immediate supervisor and immediately request the radio dispatcher to notify the Turn Commander and a member of Inspectional Services Division. Delay in the required notification shall be allowed only to render first aid, to effect an arrest or to prevent the escape of a felon; to protect a crime scene or when the officer himself is incapacitated. The immediate supervising officer of the member who discharges a weapon shall see that foregoing rule is complied with.



#### **E. SECOND WEAPONS**

1. Officers wishing to carry a second gun may do so providing they carry as their primary gun a departmental weapon which is the standard weapon carried by Departmental Personnel with the required rounds of ammunition.
2. Shotguns, rifles and automatic rifles are prohibited except for special units with prior approval of the Chief or Deputy Chief of Police.
3. All handguns, department's and privately owned shall be registered with the Training Division of this department.
4. The Training Division superior officer shall maintain the registration file.
5. The Training Division shall inspect each officer's firearm(s) annually for serviceability and record the serial number(s).
6. Whenever an officer's issued weapon is lost or stolen he shall immediately report the occurrence to the Office of the Chief and the Training Division.

#### **FIREARMS REVIEW BOARD**

**A Firearm Review Board is hereby established effective this date. The Board shall consist of a six (6) member board and shall review and investigate reports concerning the discharge of weapons by members of the force and auxiliary police and will submit recommendation thereafter to the Chief for discipline training, commendation or other official action as deemed advisable.**

#### **FIREARM REVIEW BOARD'S STRUCTURE**

**Bureau of Uniform Services, Commander (Chairman)**

**Juvenile Division Commander**

Training Division Commander

Internal Affairs Commander

Technical Services Division Commander

Detective Division Commander

1. The Board will sit on the last Thursday of each month.
2. The FRB's secretary shall prepare and maintain minutes and recommendation reports.
3. The Chief of Police will review all reports and approve or modify recommendations of FRB as required.



**GENERAL ORDER 01.1-92  
AUTHORIZED FIREARMS & AMMUNITION**

**I. PURPOSE**

The purpose of this general order is to provide the authorization for Gary Police officers to carry firearms and ammunition.

**II. POLICY**

Officer shall carry and use only the firearms and ammunition as outlined in this order.

**III. PROCEDURE**

**A. On Duty**

1. Uniform officers shall carry the fully loaded departmentally issued semi-automatic Ruger P-85 and 31 rounds of ammunition, both clips.
2. Investigative and administrative personnel shall carry the fully loaded departmentally issued semi-automatic Ruger P-85, 16 rounds of ammunition.

**B. OFF-DUTY**

1. While in uniform, officers are required to comply with Section III, item #1 of this general order.
2. In plain clothes, officer can carry either departmental issued or personal firearms providing the firearms are departmentally approved, registered with the Training Commander and officer shall successfully pass the firearms qualifications course.

**C. SECOND WEAPON**

Officer may carry a second weapon providing the second weapon is carried in addition to the departmentally issued semi-automatic Ruger P-85 firearm. Second weapon shall be approved, registered with the Training Commander and officer shall satisfactorily pass the firearms qualification course.

1. Officers wanting permission to carry an additional firearm on-duty shall register and provide the following information to the Training Commander of this department:

- a. Make;
- b. Model;
- c. Caliber;
- d. Barrel length;
- e. Serial number;
- f. Registration number

D. AMMUNITION

All handguns carried on duty or while working in uniform by Gary Police Officers and Gary Auxiliary Police Officers shall contain hollow point half jacketed or hollow point full jacketed ammunition. Only the hollow point half jacketed or hollow point full jacketed ammunition will be carried by the officer. This applies to any issued handgun as well as any secondary handgun carried by the officer.

**GENERAL ORDER 01.2-92  
FAILURE TO QUALIFY WITH DEPARTMENTAL WEAPON**

**I. PURPOSE**

Provide for the safety of the community as well as the safety of all officers and the department.

**II. POLICY**

Any officer failing to qualify with his departmental weapon shall at that time surrender his departmental weapon to the firing range officer in charge. The failing officer shall also at that time be relieved of duty for incapacity for two (2) days during which time he shall appear at another rescheduled appointment with the range officer to re-qualify. Should the officer fail a second time he shall continue his relief from duty and again reschedule another appointment with the range officer to re-qualify within two (2) days. Should a third attempt prove unsuccessful the officer's repeated inability to qualify with his departmental weapon shall be considered a continuing incapacity and a referral to the Gary Police Civil Service Commission may result.

Except by order of the Chief, all efforts to re-qualify shall be within two (2) days of the last unsuccessful attempt. Each period of relief from duty under this order shall be without pay or, at the election of the Chief, shall be deducted from the officer's authorized leave time to include, but not limited to, compensatory time of off days.

Whenever an officer fails to qualify with a second weapon, he may not carry that weapon on duty until such time that he does successfully qualify with that weapon.



**GENERAL ORDER 01.3-92  
POLICY ON POSSESSION OF GUNS BY CIVILIAN EMPLOYEES**

**I. PURPOSE**

To maintain security and safeguard the welfare of the public and employees of the department.

**II. POLICY**

At no time is a civilian employee allowed to carry any form of loaded weapon during working hours. Any such person caught with the above will be discharged in accordance with the Personnel Manual outlined for City of Gary Employees.



**GENERAL ORDER 01.4-92**

**REMOVAL OF FIREARMS FROM INTOXICATED MEMBER OF THE SERVICE**

**I. PURPOSE**

To remove firearms from an intoxicated member of the service for safety of the officer and all others.

**II. DEFINITION**

Intoxicated - unfit for duty due to the influence of alcohol, narcotics or other drugs.

**III. PROCEDURE**

Upon observing a member of the service who is intoxicated. Superior Officer shall:

1. Remove firearms from member.
2. Order member to remain at station house or other suitable location.
3. Order the officer to submit to a chemical breath examination.
4. Should the officer refuse the chemical breath examination, the superior officer has the discretion to:
  - a. arrest the officer (charge-public intoxication).
  - b. relieve officer from duty (file disciplinary report).
5. Arrest officer if he attempts to leave before being instructed by superior officer (public intoxication).
6. Return firearm to officer if determine fit for duty by Commanding Officer.

**GENERAL ORDER 02-92  
PROCEDURES FOR PROCESSING SUBPOENAS**

**I. PURPOSE**

This policy establishes a procedure for effective notice to all police officers where required to appear in court.

**II. PROCEDURE**

Court subpoenas to police officers are to be served by the officer assigned to the Technical Services Division, hereafter referred to as the Subpoena Officer. The procedure is to be as follows: The prosecutor's office is to provide the court officer all subpoenas to be served on Gary Police Officers. The court officer will list all information from subpoenas on the form provided. He will then give one (1) copy of the form and the subpoenas to the Subpoena Officer.

The Subpoena Officer will list all information from subpoenas on the form provided. After the subpoenas have been served he will return one (1) copy of the form to the court officer.

Officers subpoenaed are to report to the designated court, on the date subpoenaed at the designated time. Officers who are working on the 8 am to 4 pm turn will see court officer in the Gary City Court (only) prior to 9 am on the date they are to appear in court in order that the court officer will know that they are working and available. The officer will give the court officer the sector he is assigned to and his P unit number. The court officer will then advise the officer of the possible time he should return to court and/or the court officer will call the communications division prior to needing the officer in court so they may be apprised of the situation in regard to dispatching units to calls.

**PAGE 2/GENERAL ORDER 02-92**

**PROCEDURES FOR PROCESSING SUBPOENAS ISSUED TO GARY POLICE OFFICERS**

If an officer receives a subpoena from two (2) courts for the same date, he is to notify the Subpoena Officer of the situation. The Subpoena Officer will then contact the court officers in the respective courts and determine, if possible where the officer is most needed. If no determination can be made as to which court the officer is most needed, appearances will take place in this order; Federal Courts, State Courts, City Courts. The Subpoena Officer will contact the officer and advise him which court he is to appear in on the date in question.

If a court officer has prior knowledge that a case has been disposed of or continued, he is to notify the Subpoena Officer and/or attempt to contact the officer so that he will be aware of the situation.

If an officer fails to appear in court when subpoenaed, the court officer is to notify the Technical Services Commander on the form provided. The Technical Services Commander will then forward all necessary information to the office of the Chief for processing. The Commanding Officer of the respective division will make a recommendation as to disciplinary action after receiving such complaint from the office of the Chief.

If an emergency arises, the officer is to notify the court officer prior to the designated time and date of his/her court appearance.

Failure to comply with the above orders will result in disciplinary action.



**GENERAL ORDER 02.1-92**

**MEMBERS TO APPEAR IN COURT 12 MIDNIGHT TO 8 A.M. TOUR OF DUTY**

**I. PURPOSE**

This policy establishes a schedule for court appearance for officers working the 12 midnight to 8 am tour of duty.

**II. POLICY**

Members of the force who are assigned on the 12 midnight to 8:00 A.M. tour of duty, who are scheduled to appear (later in same day) in any local, state or federal court or agencies in response to a subpoena, court order or administrative process, are to be excused from duty at 5:00 A.M.



**GENERAL ORDER 02.2-92  
DRESS CODE FOR COURT APPEARANCES**

**I. PURPOSE**

This policy establishes a court appearance dress code.

**II. POLICY**

The dress code for Police Officers of the Gary Police Department making court appearance, be it Federal, State, Criminal or City, shall be as follows:

1. Well Groomed
2. The police uniform is always acceptable
3. When not in uniform:
  - a. Shirt and tie/sport shirt and slacks
  - b. A suit is recommended, but a sports jacket in good taste is acceptable.

Disciplinary action will be taken against any officer cited by the Judge for violation of this dress code.

**GENERAL ORDER 03-92  
RELIGIOUS COUNSELING SERVICE**

**I. PURPOSE**

A religious counseling team has been established for service to those members of the Police Department who may be experiencing domestic, social or personal problems.

**II. POLICY**

Furthermore, the Police Chaplains have developed a "Prison Ministry" for jail inmates. The service of these clergymen are available to all members of the force on an anonymous basis and may be contacted by any individual in this department desiring advice of counsel independent of any official action taken by the department.

**III. PROCEDURE**

Members of the force, front desk personnel, corrections, and radio dispatchers shall utilize this service whenever social conditions reported to the department can be remedied or mitigated by a member of the religious counseling team, e.g., threatened suicides, hostage situations, violent domestic crisis, etc.

Professional courtesy will be afforded to our chaplains when they are providing any service to a member of the force or civilian employees of the department.

**GENERAL ORDERS 04-92  
SUGGESTIONS OR GRIEVANCES**

Any sworn member of the force or civilian employee may request an interview with the Chief of Police DIRECT when they feel ordinary channels of communications are not conducive to the resolution of their concerns.

In the absence of the Chief, they may confer with the Deputy Chief of Police if they consider their needs or suggestions warrant immediate attention.

All suggestions or grievances shall be written and forwarded, signed or unsigned, in a sealed envelope to the Chief of Police and marked PERSONAL AND CONFIDENTIAL.

All suggestions or grievances shall be reviewed by the undersigned and those members who sign their letters will be personally interviewed by the Chief of Police after review of their communications.

**GENERAL ORDERS 05-92  
NEWS RELEASES**

**I. POLICY**

News or public information releases are of the immediate responsibility of the Public Information Officer. In his/her absence, the higher ranking officer on duty is authorized to provide news releases and public information.

In addition, the ranking officer at a crime scene is authorized to release information to the news media relative to that crime. Also, the investigating officers are authorized to release information to the news media on cases they are investigating.

At no time should the news media be denied information due to the absence of the public information officer.



**GENERAL ORDER 06-92**  
**ASSIGNMENT OF MARKED AND UNMARKED DEPARTMENT VEHICLES**

All department vehicles are to be under control of the Commanding Officer of the Motor Transport Division (M.T.D.). Except in emergency situations, all vehicles assigned to respective divisions and changes in assignments shall originate in writing from the office of the Chief or designee.

Commanding Officers shall request in writing the allocation, assignment or re-assignment of department vehicles as the needs of their command require.

The Commanding Officer, of the Motor Transport Division shall institute a daily trip ticket procedure for the use of all department vehicles including the mileage, fuel usage and other management information necessary for adequate records.

Vehicles shall be used for departmental business only and may include social and civic functions devoted to municipal-state-federal affairs.

**GENERAL ORDER 07-92  
SEARCH WARRANTS**

**I. PURPOSE**

To assure compliance is adhered to as outlined by law.

**II. POLICY**

To assure compliance with the prohibition of unreasonable searches and seizures expressed in the 4th Amendment of the Constitution of the United States and Article I, Section 11 of the Constitution of the State of Indiana; and to assure that Search Warrants are being obtained as required by law, the DEPUTY CHIEF OF POLICE shall be consulted prior to the search of any structure including but not limited to private residences, businesses, and garages, etc.

Further, where it is determined that a Search Warrant be obtained the Department's Legal Advisor shall be consulted. The affidavit for Search Warrant and other legal documents as well as the return of Search Warrant to be presented for judicial review, shall be submitted to and reviewed by the Department's Legal Advisor prior to their presentment to the proper Judicial Officer.

**GENERAL ORDER 07.1-92  
PROCEDURES FOR SEARCH WARRANTS**

**PURPOSE:**

No police officer shall apply for or serve a search warrant without notifying his commanding officer or inspector or his designee prior to applying for and serving the warrant. The purpose of this order is to set forth rules governing the conduct of officers of this department when serving search warrants and in searching under the authority of the warrant. This order does not cover procedures for drafting or obtaining search warrants. The requirements relating to affidavits, issuance of the warrant, and similar technical/legal problems are set forth in various sections of the Indiana Code of Laws.

**1. DEFINITIONS:**

- a. **Officer in Charge:** The search team member most knowledgeable about the case and most responsible for the investigation. Usually, he is the affiant who requested the search warrant. He will be in charge of the execution of the warrant unless a higher ranking officer from the Investigative or Public Morals Division is present, and takes charge of the search personally.
- b. **Search Site:** The place to be searched as described in the search warrant.
- c. **Search Team:** Those persons, officers and supporting civilian personnel taking part in the execution of a particular search warrant.
- d. **Seizable Items:** Contraband, Stolen, property, anything used in committing a crime, or other evidence of crime.
- e. **Evidence Collector:** A member of the search team designated by the officer in charge to take possession, of package, seal and mark all items seized at the search site.

**2. UNIFORM REQUIREMENT:**

The search team shall include at least one (1) uniformed officer. All non-uniformed officers will have their badge affixed to their outer clothing in the same approximate position as the badge on a uniformed officer.

25



**PAGE 2/GENERAL ORDER 07.1-92  
PROCEDURES FOR SEARCH WARRANTS**

**3. PROMPTNESS IN EXECUTING WARRANTS:**

A search warrant properly issued must be executed within ten (10) days and return on the warrant should be made within three (3) days; although ten (10) days are allowed to execute and serve the warrant, the police officer should execute the warrant promptly. If there is a delay in execution of the warrant, it must be for a reasonable and valid reason.

**4. NIGHTTIME WARRANT LIMITATIONS:**

Generally, search warrants should be executed only in the daytime. Daytime is considered to be that period between sunrise and sunset. If the search warrant must be executed at night, the approval of the Inspector/and or Deputy Chief, Public Morals Commander or the Chief of Police, in his absence, must be obtained. A search begun during the daytime may extend into the night, provided that the search team acts reasonably and does not prolong the search as a form of harassment. Proper planning and precautions taken before the execution of the warrant will lessen the danger to police officers and alleviate needless friction and controversy between the search team and those persons occupying the search site.

**5. ASSURING THAT THE SEARCH SITE IS CORRECT:**

The officer in charge shall take every reasonable precaution to make certain that the premises listed in the warrant is in fact the premises sought to be searched; and that the premises about to be entered is in fact the premises listed on the warrant. He shall also be alert to any change of circumstances that cancels the reason for the search. The location must be confirmed by positive identification of the physical site. If the officer in charge is not certain that the premises is in fact that listed on the warrant, and that sought to be searched; or if he concludes that the reason for the search no longer exists, no entry shall be made.

**6. RECORDING:**

The search team shall record the entire execution of a search warrant beginning with a statement of the time before approaching the search site and continuing until the search team has left the site.



**PAGE 3/GENERAL ORDER 07-1-92  
PROCEDURES FOR SEARCH WARRANTS**

**7. CONDUCT DURING THE SEARCH:**

- a. **Courtesy:** Occupants of the premises must be treated with as much restraint and courtesy as is possible under the circumstances.
- b. **Search:** Any person on the premises may be searched if it reasonably appears that an item listed in the warrant may be concealed upon his person. Mere presence at a search site, without more, is not sufficient reason to search an occupant.
- c. **Frisk:** Any person on the premises may be frisked if a member of the search team reasonably suspects that such individual has on his person a concealed weapon or dangerous instrument, and that a frisk is necessary to protect members of the search team.
- d. **Public Morals Division** can ask the K-9 Unit to assist in the search for drugs.

**8. RESTRICTION OF MOVEMENT:**

- a. **Restrictions** may be imposed on the movements of any person at the search site in order to prevent interference with the search. Upon request, one person should usually be permitted to observe the conduct of the search.
- b. **Restrictions** may be imposed on the movements of any person at or from the search site if an item listed in the warrant is readily concealable or destructible.
- c. **Restriction** of any persons' movement must end when the item(s) has been found or the search has been otherwise completed and the security of the search team is assured, unless the person is subjected to full custody arrest.

**9. ARREST**

Probable cause to arrest a person at the search site may arise during execution of a search warrant. In that even a search incidental to that arrest but independent of the warrant may be conducted.

28

**PAGE 4/GENERAL ORDER 07.1-92  
PROCEDURES FOR SEARCH WARRANTS**

- a. **Discovery of Unspecified Seizable Items:** If during the search incidental to that arrest but independent of the warrant may be conducted.
- b. **Termination of Search:** When all items listed in the warrant have been found, or when it reasonably appears that the items are not on the premises, the search shall be terminated.
- c. **Leave a copy of Search Warrant with a list of all property seized and must be signed by the Evidence Collector.**

**10. CONDUCT AFTER THE SEARCH:**

- a. **Maintaining a Record:** A complete record of the important features of a search must be made, including the time and place the warrant was obtained, the time execution began, all circumstances of the entry, and the identities of those persons on the search team and those occupying the search site. (a copy of this record shall be submitted to the Public Morals Commander or Inspector or Deputy Chief. Photographs of the areas searched should be taken before and after the completion of the search. Video recording devices may be used to help complete the record in unusual or highly significant searches.
- b. **Erroneous Search:** If the search team believes that a search was the result of a law enforcement error, the lead investigator should apologize to the occupants for the inconvenience and a detailed report submitted to the Chief of Police. The apology, however, must not include any admission of liability or indication that any governmental agency will compensate momentarily for the intrusion.

**11. PROTECTING PREMISES IF DAMAGE OCCURS DURING ENTRY:**

**Premises to be left vacant:** If damage occurs during any entry to premises that will be left vacant, and the damage is sufficient to jeopardize the security of the premises, the search team shall make arrangements to protect the premises until they can be secured.



**PAGE 5/GENERAL ORDER 07.1-92  
PROCEDURES FOR SEARCH WARRANTS**

**12. UNSUCCESSFUL SEARCH:**

If a search has been unsuccessful, and the damage incurred is sufficient to jeopardize the security of the premises of the occupants, the occupants must be asked if they would like protection until the premises can be made secure. If the occupants so indicate, the search team shall see to it that the premises are protected until they can be secured.

**13. OTHER CIRCUMSTANCES:**

When any other circumstances arise which reasonably obligate the searching agency to provide protection until repairs are made, or where it would be in the best interest of the searching agency to provide protection, the search team shall see to it that the premises are protected until the property is secured.

**14. TURNING OVER SEIZED ITEMS TO PROPERTY CUSTODIAN:**

The evidence collector must secure any seized items in a manner which will preserve the chain of custody for evidentiary purposes.

**15. RETURNING THE WARRANT:**

The lead investigator shall see to it that the warrant is returned to the issuing authority as soon as practicable, and in no event longer than three (3) days after the search. A copy of the list of all items seized during the execution of the warrant shall accompany the warrant.

**16. RELEASE OF SEIZED ITEMS:**

When non-contraband items seized during the execution of a warrant are no longer needed for prosecution purposes, they should be released to the proper party, and a receipt obtained.

**17. WHEN FOREGOING MODEL RULES MAY BE DISREGARDED:**

Whenever it appears that any of the foregoing rules should be modified or disregarded because of special circumstances, specific authorization to do so must be obtained from Public Morals Commander, Inspector, Deputy Chief of the Chief of Police.

STATE OF INDIANA       )  
                              ) SS:  
COUNTY OF LAKE        )

**AFFIDAVIT FOR SEARCH WARRANT**

\_\_\_\_\_ swears or affirms that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause);

That (here describe the things to be searched for and the offense in relation thereto);

...are concealed or located in or about the premises of (here describe the house or place)

...of (here describe the possessor or owner, if known);

I swear, under the penalty for perjury as specified by IC 35-44-2-1, that the foregoing is true to the best of my information and belief.



STATE OF INDIANA     )  
                          )  
COUNTY OF LAKE       )     SS

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_  
19\_\_\_\_.

\_\_\_\_\_  
Judge/Magistrate

STATE OF INDIANA            )  
                              ) ss:       IN THE \_\_\_\_\_ COURT  
COUNTY OF LAKE            )       OF LAKE COUNTY

**SEARCH WARRANT**

To \_\_\_\_\_  
(herein insert the name, department of the law enforcement officer)

You are authorized and ordered, in the name of the State of Indiana, with the necessary and property assistance to enter into or upon (here describe the place to be searched with sufficient specificity);

and there diligently search for (here describe the property or person which is the subject of the search);

You are ordered to seize such property and/or persons, or any part thereof, found on such search.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
at the hour of \_\_\_\_\_ am/pm.

\_\_\_\_\_  
Judge/Magistrate

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
at the hour of \_\_\_\_\_ am/pm.

\_\_\_\_\_  
Investigator - Officer

STATE OF INDIANA )  
COUNTY OF LAKE ) SS:

RETURN OF SEARCH WARRANT

I received the attached Search Warrant on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and have executed it as follows:

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. I searched the premises described in the Search Warrant and I left a copy of the Search Warrant with \_\_\_\_\_

(name of person searched) or ( a person at the place of search) together with a receipt for the property seized.

The following is an inventory of property taken pursuant to the Search Warrant:

This inventory was made in the presence of \_\_\_\_\_ and \_\_\_\_\_.

I swear that this inventory is a true and detailed account of all the property taken by me pursuant to said Search Warrant.

Subscribed and sworn to and returned before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

(SEAL)

**GENERAL ORDER 08-92  
SICK LEAVE POLICY**

**I. POLICY**

Gary Police Departmental Policy and Orders regarding absence from duty caused by illness or injury.

**II. DEFINITIONS**

**SICK LEAVE** - Any period of absence from duty in excess of three (3) calendar days due to illness or injury.

**SICK DAY** - Absence from an officers scheduled eight (8) hour shift or tour of duty due to illness or injury.

**WORKING DAY** - An eight (8) hour shift or tour of duty during which an officer is scheduled to be on ACTIVE duty or other assignment to include an on call status.

**OFF DAY** - Any twenty four (24) hour period, aside from turn or shift changes or vacations, during which an officer has no active or on call duty.

**MEDICAL RELEASE** - A Gary Police Department Medical Form (A) completed and signed by the Physician.

**GENDER REFERENCES** - All references to "him", "he", and "his" throughout this order and statement of policy apply equally to both male and female officers.

**III. PURPOSE**

- A. To establish clear guidelines and procedures regarding all absences from duty assignments caused by illness or injury.
- B. To prevent abuse of the sick leave benefits now in place by city ordinance.
- C. To provide incentives to those officers who voluntarily refrain from abusing said benefits.



### **GARY POLICE SICK LEAVE BENEFIT DURATION**

Each member of the Police Department shall be entitled to ninety (90) calendar days paid injury or sick leave within any twelve (12) month period whether taken continuously or one sick day or days at a time. This sick leave is not to diminish vacation benefits. However, off days which fall during any period of sick leave, or number of sick days, shall not be retrieved, accumulated or used to extend the maximum ninety (90) calendar days of sick leave provided to each officer. Any extensions of said leave for either injury or sickness may be granted by the Chief of Police. When no such extension is granted, an officer who has spent ninety (90) calendar days of sick leave or ninety (90) sick days during any twelve month period of time shall be removed from the payroll of the Gary Police Department unless he returns to work.

Officers not able to return to full police duty unless granted an extension of sick leave due to exceptional circumstances are advised to apply for a temporary or permanent pension prior to exhausting their ninety (90) days.

### **REPORTING OFF FROM WORK DUE TO ILLNESS OR INJURY**

Employees are expected to report for work whenever scheduled. Any officer desiring to report off sick will do so by telephoning his/her immediate supervisor at least ONE HOUR prior to scheduled tour of duty. Officers reporting off shall give name, address, telephone number (where they can be reached), rank badge number, and explain the nature of illness or injury.

Any officer who reports off sick on a day that he/she has been subpoenaed to city, county or federal court shall be responsible for notifying the proper agency that he/she will not be able to comply with the subpoena because of illness or injury. The officer also has the responsibility of notifying the proper agency in cases where the officer has been subpoenaed by a Grand Jury or for a deposition.

All officers shall be required to report off each and every day that they are off sick. This procedure applies to all officers except those who have provided medical reports from their doctors stating that they will be off for an extended period of time. Any officer not able to report off because of a severe illness will be exempted from calling off daily.



The immediate supervisor of the officer reporting off sick shall record the person as sick in the Division Records. The supervisor shall also prepare a sick report in duplicate. The original shall be forwarded to the Chief's Office statistician and a carbon copy forwarded to the Division Commander.

#### THE MEDICAL RELEASE REQUIREMENT

All officers who report off due to illness or injury for three (3) or more consecutive days shall be required to submit a medical release to the Police Chief's office. Whenever an officer is unable to immediately obtain a medical release because of a holiday or an extenuating circumstance that officer may be returned to duty by the immediate supervisor. However, in such cases in which the medical release is not then available the supervisor and the returning officer are to certify on a Return to Duty Form that the returning officer make the following representations without qualification:

- A. That the returning officer is fully fit to return to his regular assignment.
- B. That the physician of the returning officer supports his return to regular duty and, but for a holiday or another extenuating circumstance, would have then provided him with a medical release.
- C. That the returning officer shall, within seventy two (72) hours of his return to duty provide the immediate supervisor and the Office of the Chief with his written medical release.

This Return to Duty Form containing the above representations of the returning officer shall be signed by the returning officer before he begins duty. Said form shall also be signed by the immediate supervisor and the Watch Commander provided they have no cause to deny the officer's return to duty. Should the returning officer fail to produce the above mentioned release within the time required, such failure may result in disciplinary action to include, but not limited to, the charge of Absent Without Leave (AWOL) for the period of time the officer was off duty and purportedly ill prior to returning.

Any officer reporting off sick because of illness or injury the day before and after his scheduled days off, will be regarded as on sick leave for the entire period of absence. He shall be required to provide the Chief's Office with a medical release form upon his return to work or within seventy two (72) hours of same as conditions permit.

Once an officer has accrued nine (9) or more sick days during a calendar year he or she shall be required to provide a medical release for each occurrence of illness or injury thereafter. Any officer seriously ill with hospitalization, injured on duty, had surgery or pregnant will be exempted from the nine (9) days restriction, after review by the Chief. The above provision does apply to any residual effect or recurrent problems subsequent to a return to duty injury. Pregnancy shall be treated as an illness for sick leave purposes and is subject to the same departmental procedures and policies as any other disabling medical condition.

#### **SECOND JOB**

Any officer, while on sick leave due to illness or injury, shall not engage in off duty employment without prior approval from the Chief of Police.

#### **DESCRIPTION**

Officer who fails to comply with the policy and procedure in regard to sick leave shall be carried as ABSENT WITHOUT LEAVE (AWOL), and he/she will be subject to disciplinary action and/or loss of wages.

#### **SAFEGUARDING ISSUED EQUIPMENT**

Officers on sick leave who feel that they will not be able to safeguard their weapon, radio shield, and badge shall notify their immediate supervisor.

The supervisor will, at that time, take possession of the issued equipment and turn it into the Training Division.

#### **SUSPENSION**

Officers who are suspended while on sick leave or who become disabled while on suspension and are unable to return to duty after the expiration of the suspension shall follow regular procedures for placement on sick leave.

#### **COMPENSATORY TIME OFF**

Any officer completing one full calendar year without a deduction for sick time, he/she will be granted an additional five (5) days which may be added to their vacation or taken one (1) at a time with approval of the supervisor. Time may be accrued in the manner from year to year and may be scheduled to extend vacations or such off time may be taken a day or more at a time as the officer and his supervisor see fit.



**GENERAL ORDER 08.1-92  
VACATION SCHEDULES**

1. Vacations will be selected in the following manner:  

Based on Department Rank

Based on Department Seniority
2. If an officer is transferred to another division after the selection of vacations, that vacation will be honored if still available in the new division.
3. If the officer's previously selected vacation is not available, the officer will be required to select another available vacation date.
4. Each Commanding Officer must submit to the next highest superior officer in the chain of command a written request to take his selected vacation or any other leave of absence, due dates, etc., and recommending a subordinate officer to fill his vacated position during any of his absences.
5. The next highest superior officer shall either approve or disapprove each request including the recommended assignment of a subordinate officer for replacement duty during any absence.
6. An officer hired after July 1st will not receive a vacation for that calendar year.
7. An officer hired between April 1st through July 1st will receive one (1) week vacation.
8. An officer hired between January 1st through April 1st will receive two (2) weeks vacation.
9. After one (1) full year of employment an officer will receive three (3) weeks vacation per year.
10. After an officer's fifth full year of employment, officer will receive four (4) full weeks of vacation.



**GENERAL ORDER 08.2-92  
DEATH IN FAMILY LEAVE**

**I. PURPOSE**

The purpose of this order is to grant a member of the force a leave of absence with pay when a member of his immediate family dies.

**II. DEFINITION OF IMMEDIATE FAMILY SHALL INCLUDE THE FOLLOWING:**

- a. Spouse
- b. Natural, foster or step parent
- c. Child
- d. Brother or sister
- e. Father-in-law
- f. Mother-in-law
- g. Any relative residing in the household

**III. WHEN A DEATH OCCURS IN THE IMMEDIATE FAMILY:**

- a. Leave of absence.
- b. Roll call officer will prepare the application if member of the force is unable to make personal application.
- c. Submit to commanding officer.

**IV. THE COMMANDING OFFICER SHALL:**

- a. Grant four (4) consecutive tours with full pay.
- b. Verify the death and relationship.
- c. Have the member of the force produce the official notice of death if the relative was in the military service of the United States.
- d. Forward copy of application with endorsements through departmental channels for file in the personal folder of the member of the force

**GENERAL ORDER 08.3-92  
MATERNITY LEAVE**

**I. PURPOSE**

This order shall define departmental policy as it applies to female officers of the Gary Police Department concerning maternity leave of absence in accordance with law.

**II. POLICY**

- A. Maternity Sick Leave shall be granted to female officers of up to ninety (90) days with pay, upon written request by the officer's physician.
- B. Extended Leave (Pre-natal) may be granted without pay for an additional period not to exceed six (6) months.

**III. PROCEDURE**

**A. Maternity Sick Leave**

- 1. An officer wishing to use Sick Leave shall use his/her remaining sick days, up to and not exceeding ninety (90) days.
- 2. Before the leave is to begin, the officer shall present a written request from her physician to the office of the Chief.

**B. Extended Leave**

- 1. Extended Leave (Pre-natal, Post natal) may be granted without pay for an additional period not to exceed six (6) months.
- 2. When applying for Extended Leave the officer must first exhaust all of her vacation time and/or any other earned days before the request will be approved.

PAGE 2/GENERAL ORDER 08.3-92  
MATERNITY LEAVE

3. Extended Leave must be stipulated in a letter from the Officer's physician, reviewed and approved by the Police Surgeon, and directed for approval to the Chief of Police.
  4. If the Extended Leave is approved, the officer is required to obtain a medical statement from the Police Surgeon and present it to the Office of the Chief on a monthly basis.
    - a. The statement shall include the reason(s) why the officer is unable to return to duty and, if possible,
    - b. The anticipated date of return.
- C. Return to duty

After the officer has been released by her physician, she shall report to the Police Surgeon for review.



**GENERAL ORDER 08.4-92  
MEDICAL POLICY  
SKIN DISORDER/FACIAL BEARDS**

**I. PURPOSE**

This order assigns responsibilities and establishes procedures to be followed when a sworn member, auxiliary member, or a uniformed civilian member, i.e., Correctional Officer, who is aggravated by shaving.

**II. RESPONSIBILITIES AND PROCEDURES**

A. A sworn member, auxiliary member or a uniformed civilian member who has a skin disorder which is aggravated by shaving will:

1. Submit to the Police Surgeon a current letter, within seven (7) days, completed by a dermatologist expressing the physician's opinion in detail that the medical treatment and therapy of the skin disorder require that the member stop shaving.
2. Be examined by a dermatologist selected by the Police Surgeon for diagnosis and proper shaving instructions regarding the minimal length the beard can be shaved without aggravating the skin disorder.
3. Continue full duty if corrective treatment does not require the member to stop shaving.
4. Be assigned to convalescent duty if corrective treatment requires that the member stop shaving. The Police Surgeon will determine the length of time the member will not shave. During this period of time, the member will be assigned to duties which limit public view of him in uniform.
5. At the end of the convalescent period, return to the Police Surgeon for examination.
6. Return to full duty when convalescent duty is terminated by the Police Surgeon.



**GENERAL ORDER 08.5-92  
ON THE JOB INJURIES**

All on the job injuries are to be handled in the following manner:

1. Inform your supervisor as soon as possible of said injury.
2. It will be the supervisors responsibility to make sure there is a written report on file. If there is no injury report on file, bills received will be the officer's responsibility.
3. Forward all bills to the office of the Chief so they can be processed for payment.
4. Processing package includes:
  - a. On the job injury written report
  - b. Claim form (handled through the office of the Chief)
  - c. Bill
  - d. Letter of verification from Supervisor
  - e. Letter of approval from Deputy Chief

**GENERAL ORDER 08.6-92  
DUE DAY PROCEDURE**

**I. PURPOSE**

This order shall establish a uniform procedure for requesting due days.

**II. POLICY**

Officers shall prepare and submit a due day request form(s) when requesting time-off from the department.

**III. PROCEDURE**

**A. Request Form**

1. In completing the due day request form, officers shall only denote one (1) category (perfect attendance, awarded days, etc.) on a single form. If two (2) or more categories are to be used, then separate forms shall be submitted for each.
2. Officers shall submit their request within ten (10) days following the event for which the day is requested.
3. All due day request forms are to be signed by the Division Commanders and the officer submitting the request.

**B. Granted Form**

1. The Bureau Office shall prepare a due day form for each day granted and the form will be forwarded to the officer. When the due day is used the due day form will be attached to the Daily Detail being sent to the Bureau Office.
2. Commanders shall forward due day granted forms to the Chief's Office attached to the daily detail sheet.

**C. Statistician**

1. Shall be responsible for receiving, posting and filing all due day granted forms.

PAGE 2/GENERAL ORDER 08.6-92  
DUE DAY PROCEDURE

D. Category Break-down

1. DS - Due days according to sick policy (see 05/59-90). These days are approved the following year when an officer does not call off due to sickness, A.W.O.L. or suspension days for the entire year, commencing January 1st and ending December 31st. Only five (5) days can be taken.
2. DA - Due days are awarded by the Bureau Commander. The reason is to be notated on request form.
3. DC - Due day(s) earned for court time. A verified/signed court sheet must be attached to request form showing time in and out and totalling up to eight (8) hours. This is for time that would be considered as off time if the officer had not been required to be in court.
4. DT - Due day for accumulated time. A time card(s) must be attached to request form showing overtime worked in excess of eight (8) hours only reasonable time to complete the task will be allowed.
5. DW - Due day for warrants served. During the course of one (1) month if an officer is able to serve seven (7) warrants, he is entitled to one (1) due day. No due days will be awarded for warrants served while working overtime. Verifying documentation must be attached to request form.



**GENERAL ORDER 09-92  
TO SAFEGUARD EVIDENCE AND DETAIN WITNESSES FOR  
CRIME SCENE PROCEDURE**

**I. PURPOSE**

Upon responding to a crime which may require safeguarding of the scene, to preserve evidence:

**II. PROCEDURE**

1. Request response, through the Communications Division of:
  - a. Patrol Supervisor
  - b. Detective Division
2. Remove unauthorized persons from the area and secure the crime scene:
  - a. DO NOT DISTURB EVIDENCE
3. Detain witnesses and persons with information pertinent to the crime.
4. Rope off the crime scene area and have CRIME SCENE signs posted.
5. Record on activity sheet
  - a. Observations
  - b. Identity of suspects/witnesses with addresses and telephone number and any other information including statements made whether casually or formally.
6. Advise Patrol Supervisor and Detectives of:
  - a. Identity of witnesses/suspects detained.
  - b. Other information regarding the case.
7. The provisions of this order will automatically be placed into effect by a member of the force that is first on the scene of the following:



PAGE 2/GENERAL ORDER 09-92  
CRIME SCENE

- a. Homicide
  - b. Forcible rape
  - c. Robbery or hijacking with injuries caused by firearms.
  - d. Aggravated assault with a dangerous instrument and the victim is likely to die.
  - e. Burglary involved forced safes, circumvented alarms, other physical evidence.
  - f. Any crime which may require services of the Bureau of Identification.
8. The Press Relations Officer will provide and maintain a supply of CRIME SCENE signs no smaller than 10" X 14" bearing the legend NO TRESPASSING GARY POLICE DEPARTMENT, CRIME SCENE in double size letters, black over yellow.
  9. The commanding Officer Training Division will provide three (3) ropes to be used to establish the crime scene area. One (1) rope shall be placed in each of the mobile support vehicles with adequate CRIME SCENE signs.
  10. In a homicide or other serious cases, ~~the ranking member~~ of the Detective Division who is present at the scene will be in charge of the investigation.

**GENERAL ORDER 09.1-92  
PROCEDURE FOR EVIDENCE/PROPERTY**

**I. PROCEDURES FOR PROPERTY/EVIDENCE**

1. Property turned in will be stored in the two (2) cabinets already used as property holding spots.

The cabinets are located directly behind the desk sergeants desk.

The cabinet that has a cut drop slot on its side will be used for the following evidence only, MONEY, NARCOTICS, & HANDGUNS. This cabinet is so marked. The only keys for this cabinet will be in the possession of the property clerk only. The side slot will be the dropping point.

The second cabinet will be used for bulk items such as RIFLES, SHOTGUNS, & OTHER SMALLER VALUABLES, the desk sergeant has a key to open this cabinet for placement of items.

**II. TURNING IN PROPERTY**

All property turned in will be logged into four (4) separate categories.

1. Narcotics
2. Money
3. Guns
4. Other (any item other than the three (3) above)

Each item turned in that falls in the first three (3) categories must have a separate property slip attached with the case number.

**III. PROCEDURE IN EVIDENCE OR PROPERTY SLIPS**

Officer turning in property will make out a property slip.

The turn supervisor will double check to make sure that all items listed are correct and accountable, then sign the property slip.

PAGE 2/GENERAL ORDER 09.1-92  
PROCEDURE FOR EVIDENCE/PROPERTY

Desk personnel will verify the accountability of the property and also sign the property slip.

The desk personnel will then heat seal the property prior to the dropping of the property in the cabinet.

Very large items will still be held where room allows.

IV. PROPERTY CLERK

There will be a log book assigned for each of the four (4) categories which will be kept by the property clerk, each book will have all entries concerning the property.

The small safe will be installed in the main vault which will be used for money only, the money and log book will be locked in the safe.

A metal file cabinet will also be placed in the main vault for narcotics use only.

The main vault will hold narcotics, guns, and money only. All bulk items will be stored in the locked Bureau of Identification holding rooms behind the Training Room.

A scale will be used to weigh each package of narcotics that is turned in or taken out.

No property will be accepted by the property clerk unless it is submitted properly.

HEAT SEALED, CORRECTLY INVENTORIED, CASED,  
PROPER SIGNATURES.

Four (4) log books will be correctly maintained, listing all items.



**GENERAL ORDER 10-92  
COMMAND DISCIPLINE**

**I. POLICY**

To establish procedures and guidelines for the implementation of any punishment.

**II. PURPOSE**

To permit a commanding officer to correct minor violations of rules and procedures without resorting to formal charges and Gary Police Civil Service trials, COMMAND DISCIPLINE, non-commission punishment, is now available to correct minor deficiencies and maintain discipline within his command.

The Legal Advisor of the Gary Police Department will be consulted whenever guidance is needed by commanding officers in procedural matters or constitutional guidelines.

**III. PROCEDURES**

Municipal Ordinance 6545 passed and adopted by the Common Council of the City of Gary effective December 6, 1991 revised Section 10.

**SECTION 10: Discipline: Findings & Proposed Discipline for Violation - Grounds for Complaint.**

- A. Any commanding officer with rank of Sergeant or above, may with the approval of the Chief, recommend the following discipline for minor violations of rules and orders of the Board, Commission or Chief:
  - 1. Up to five (5) working days suspension, with or without pay and allowance;
  - 2. Imposition of said punishment under Subsection A. 1, shall be immediate and take effect prior to a Commission hearing.
- B. An officer so suspended who desires an interview by the Chief regarding suspension shall have ten (10) calendar days from receipt of the written request for said interview with the Chief.



**PAGE 2/GENERAL ORDER 10-92  
COMMAND DISCIPLINE**

- C. In all cases wherein the Chief has imposed a pre-hearing suspension, the officer's interview shall be for the purpose of presenting a request for reconsideration.**
- D. Should the suspended officer fail to make timely request for an interview or fail to appear for the interview, shall be deemed to have waived his right to contest imposition of the terms of the suspension.**
- E. However, should the officer appear at the interview and still desire to appeal the suspension, shall within ten (10) days of the interview request a review of the Chief's suspension by the Commission. The burden of proof shall be upon the Chief to show that said complaint procedure was in accordance with due process of law.**
- F. In all cases of suspension without pay and/or allowances the Chief shall submit within ten (10) days of suspension, a written explanation to the Commission explaining the rule and/or regulation violated.**
- G. The Commission may confirm, reject or modify the adverse action taken by the Chief of Police.**
- H. A police officer shall be disciplined, in the manner permitted under Section 35.127 of this chapter, if:**
  - 1. he/she is convicted of a crime;**
  - 2. he/she has been indicted or charged in a court of appropriate jurisdiction upon charges constituting felony or Class A misdemeanor; or**
  - 3. the commission finds him/her guilty of a misconduct including:**
    - a. negligence of duty;**
    - b. violation of Commission rules;**
    - c. negligence or disobedience of orders;**
    - d. continuing incapacity;**
    - e. absence without leave;**
    - f. immoral conduct;**
    - g. conduct injurious to the public's peace and welfare;**
    - h. conduct unbecoming a police officer; or**
    - i. furnishing information to an applicant for appointment or promotion that gives that**

PAGE 3/GENERAL ORDER 10-92  
COMMAND DISCIPLINE

person advantage over another applicant.

- I. In the absence of the Chief of Police, the Deputy Chief shall assume all authority granted to the Chief of Police under this section.

To begin disciplinary proceedings under this subsection, the Chief must file a complaint against the police officer with the Commission. However, a police officer may be suspended by the Chief without a hearing in those cases described in clause 2 of this subsection.

Any person, including a commissioner, may file a complaint with the Commission alleging that one (1) or more police officers are guilty of misconduct. A complaint filed under this subsection must be verified by a sworn affidavit submitted into the Commission with the complaint. Where a complaint is filed by a commissioner under this section, the commissioner is disqualified from taking any action with respect to that complaint.

Section 10.1: Discipline, Hearing procedure, continuances, limitation or actions, Hearing Officer, costs

- A. A complaint or appeal may be rejected by the Commission. If accepted, the Commission or Hearing Officer may hear the complaint.

A Hearing Officer selected pursuant to Subsection H may conduct a hearing for each complaint filed with the Commission under this Chapter. The Commission may refer the complaint to a Hearing Officer no later than thirty (30) days after the police officer against whom the complaint is filed. The notice may be served in person or by leaving a copy at the police officer's last and usual place of residence. In addition, a copy of the notice shall be mailed to the person or persons who filed the complaint. The notice must state:



**PAGE 4 GENERAL ORDER 10-9'**  
**COMMAND DISCIPLINE**

1. the date, time and place of the hearing on the complaint;
  2. the basis of the complaint;
  3. that all parties to the complaint are entitled:
    - a. to be presented by counsel or other representative of his/her choice;
    - b. to call and cross-examine witnesses;
    - c. to require the production of evidence; and
    - d. to have subpoenas issued, served and executed.
- B. The Hearing Officer or Commission may:
1. compel the attendance of witnesses;
  2. examine witnesses under oath;
  3. order the production of books, papers, and other evidence; and
  4. issue subpoenas.
- C. If a witness refuses to appear at a hearing after having received written notice requiring his/her attendance, or refuses to produce evidence that the Hearing Officer requests by written notice, the Hearing Officer may file an affidavit in the Circuit Court of the county setting forth an affidavit in refusal. Upon the filing of the affidavit, a subpoena shall be issued from the Circuit Court and be served by the Sheriff of the county requiring the appearance of the witness or the production of records or evidence to the Hearing Officer.
- D. Disobedience of a subpoena constitutes contempt of the Circuit Court from which the subpoena has been issued. Expenses related to the filing of an affidavit and the issuance and service of a subpoena shall be charged to the witness against whom the subpoena has been issued, unless the Circuit Court finds that the action of the witness was taken in good faith and with reasonable use.

**PAGE 5 GENERAL ORDER 10-92  
COMMAND DISCIPLINE**

In the case, and in any case in which an affidavit has been filed without the issuance of a subpoena, the expenses shall be charged to the Commission.

E. The Hearing Officer shall keep a transcript of the proceedings, the transcript of testimony adduced and pleadings, exceptions, motions, requests, and papers filed by the parties, other than separately presented briefs or arguments of law, shall constitute the complete and exclusive record. The Hearing Officer shall prepare a recommended finding and determination. Notice of the filing shall be given to the parties involved in the complaint or appeal. Any party may within then (10) days file his/her objections to the entry of the record filed, the Commission shall set the matter for hearing which shall be on the record filed with the Commission. The Commission may hear additional evidence. In order to hear additional evidence, the Commission may exercise the powers granted a Hearing Officer under division B) and C) of this section. After the hearing, the Commission shall adopt, amend or modify the recommended finding and determination. If no objections are filed, the Commission may adopt the recommended finding and determination without further hearing. If the Commission does not so adopt the recommended finding and determination, it shall set the matter for hearing and notify the parties involved in the complaint or appeal and proceed as though objections had been filed to the recommended finding and determination of the Commission shall be given promptly to the parties involved in the complaint by the Commission. The Commission's finding and determination, including any discipline ordered by the Commission, shall become final within ten (10) days unless appealed from this Commission as provided in 35-128.

F. No continuance of any hearing shall be granted unless a written request for such continuance is received in the office of the Commission at least five (5) days prior to the date set for hearing. Notice of the continuance shall be provided to each of the parties involved.



**PAGE 6 GENERAL ORDER 10-92  
COMMAND DISCIPLINE**

- G. No disciplinary proceeding shall be commenced more than one hundred twenty (120) days after discovery and in no event more than two (2) years after occurrence of the alleged misconduct, except where the alleged misconduct would, if proved in a court of appropriate jurisdiction, constitute a felony or Class A misdemeanor.
- H. The Commission shall establish a list of five (5) attorneys, admitted to practice law in the state, who are willing to act as Hearing Officers. The Commission shall adopt rules concerning the rotation of names of the attorneys to act as a Hearing Officer on any particular case.
- I. Each party shall bear his/her own costs of any hearing conducted before a Hearing Officer of the Commission.
- J. During the time period after a complaint is filed with the Commission and before the Commission makes its final finding and determination with respect to that complaint, a party to the complaint may not communicate with the assigned Hearing Officer or member of the Commission, unless notice of the meeting is given, and an opportunity to be present is afforded, to the other parties to the complaint. However, this division does not apply to an official hearing or proceeding conducted under this section.

**GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE RELATIVE TO  
ALL POLICE VEHICLES**

**I. PURPOSE**

The purpose of this order is to establish guidelines concerning the operations of police vehicles during normal, emergency, and pursuit conditions; and procedures related to police vehicle accidents and damage.

**II. LEGAL REFERENCE**

Indiana Code 9-4-1-25

**III. POLICY**

It is the policy of the Gary Police Department that all officers operate city-owned/leased vehicles with due regard for the safety of all persons. Officers are reminded that State and local provisions will not protect the officer from the consequences of his reckless disregard for the safety of others.

**IV. TRAFFIC SAFETY**

- A. Officers shall consider road, traffic, and weather conditions at all times while operating a police vehicle.
- B. Officers shall use reasonable care, regardless of the nature of the run, for the protection of life and property.
- C. When a officer exits a police vehicle the officer shall remove the key from the ignition and maintain key in his/her possession.

When an officer exits a police vehicle, for any reason other than an emergency situation, all doors to departmental vehicle shall be locked.

At no time shall the vehicle be left with engine running.

**PAGE 2/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE**

**V. EMERGENCY OPERATION**

- A. For all reasons to operate on an emergency basis the officer must first be granted permission from his supervisor. Once permission has been granted the officer shall enter the name of the supervisor on his activity sheet.
- B. While operating a police vehicle under emergency conditions, the red light and siren must be operating, exception: silent runs (refer to Section VI).
- C. When driving under emergency conditions, the following procedures shall be adhered to:
  - 1. Police vehicles approaching a red traffic signal or stop sign will stop and yield right-of-way to all moving vehicles and pedestrians within the intersection, and those approaching in a manner that would cause them to become a hazard.
  - 2. Police vehicles approaching a green traffic signal or an intersecting street, where the officer has the right of way shall be prepared to take evasive action and brake, if necessary, then proceed with caution only when safe.
- D. EXCEPTION
  - 1. ~~When making a routine traffic stop~~ the red light and siren may be used without the supervisor's permission.
    - a. This does not mean that an officer may proceed with a pursuit of the vehicle without the supervisor's permission.
  - 2. When a car is kept in a parked position during traffic control the red light may be used without the supervisor's permission.



**PAGE 3/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE**

**VI. SILENT RUNS**

- A. Silent run is defined as operating under emergency conditions utilizing red lights but no audible signal.
- B. Silent runs are authorized for the following:
  - 1. For all reasons to operate on silent runs the officer must first be granted permission from his supervisor. Once permission has been granted the officer must enter the name of the supervisor on his activity sheet.
- C. When using red lights only, the officer must:
  - 1. Obey all traffic laws.
  - 2. Stop at all stop signs and traffic signals; proceed only when the way is clear.
  - 3. Operate with extreme caution and at a reasonable speed so as not to endanger the life and property of others.

**VII. PURSUIT DRIVING CONDITIONS**

- A. Pursuit is defined as sustained chase of a known or suspected law violator and is permitted with the permission of his supervisor, for the following:
  - 1. On-sight pursuit of known or suspected felon.
  - 2. On-sight pursuit of traffic or misdemeanor violators, witnessed by the officer;
  - 3. To assist a pursuit vehicle, but only when ordered to do so by a field supervisor through the Communications Center.
- B. PURSUIT PROCEDURES
  - 1. While operating under pursuit conditions, red light and siren must be operating.



**PAGE 4/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURES**

2. The pursuing officer shall notify Communications immediately of the following:
  - a. Unit number
  - b. Location
  - c. Direction of travel
  - d. Reason for pursuit
  - e. Description of vehicle, occupants, license number etc.
- C. The officer shall remain in constant contact with Communications and advise of all pertinent information until such time as additional units are called for assistance.
- D. Communications shall broadcast the chase on all channels.
- E. Unmarked police vehicles, van-type, jeeps, cycles, and wagons may initiate a pursuit only under extreme circumstances but shall terminate such pursuit immediately when a marked vehicle using red lights and sirens takes up the pursuit. If the vehicle is not equipped with red lights and sirens, it cannot pursue.
  1. EXCEPTION: A wagon transporting prisoners cannot initiate/join a pursuit at any time under any circumstance.
  2. The initiating unit will proceed under normal driving conditions; in the event of an apprehension, the initiating unit shall respond to the scene.
- F. ASSISTING UNITS
  1. At no time shall more than two (2) police vehicles be in actual pursuit of another vehicle unless specifically ordered to do so by the Communications Division or Field Supervisor through the Communications Division.
  2. The second vehicle involved in the pursuit shall keep Communications advised of all pertinent information relating to the pursued and pursuing vehicle.

**PAGE 5/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE**

3. The second vehicle may take over the actual pursuit only after being requested to do so by the initial pursuing unit.
4. Police units relatively close may move in using normal emergency limitations but shall not leave their assigned sector/beat or use pursuit driving conditions unless specifically ordered to do so by the Communications Division.
5. At no time shall assisting units convoy behind the pursued vehicle.

**G. HELICOPTER ASSISTANCE**

1. Helicopter assistance will be requested by the Communications Division of Field Supervisor through the Communications Division.
2. Ground units will relay all necessary information to helicopter personnel.
3. Helicopter units will advise ground units of upcoming traffic congestion, road hazards, and other factors possibly endangering the safety of pursuing units and other life and property.
4. When a helicopter is available and has visual contact with the pursued vehicle, the primary unit should consider discontinuing emergency operation (red lights and siren) and allow the helicopter to continue surveillance of the suspect and assume the responsibility of directing the ground units so as to apprehend the suspect without the dangers involved in a pursuit.

**H. TERMINATION OF PURSUIT**

1. Pursuit conditions may be terminated upon the authority of the pursuing officer, the Communications Division, or the Field Supervisor through the Communications Division.
2. The only units remaining at the termination point should be the initial pursuing officer, last officer pursuing, and anyone ordered by the Field Supervisor.



**PAGE 6/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE**

3. The officer of the primary unit is responsible for the arrest when the suspect voluntarily terminates the pursuit, or becomes involved in a traffic accident.

**J. ROADBLOCKS**

1. Members of the Department shall take reasonable precaution to protect life and property when establishing a roadblock for the purpose of stopping fleeing vehicle.
2. Upon the authority of the Field Supervisor roadblocks shall be established using the following criteria:
  - a. A roadblock shall not be established on a blind curve or crest of a hill where the driver of the fleeing vehicle, or any other vehicle, would be denied the ability to stop.
  - b. The roadblock shall not be placed in a dark or shaded location where it cannot be readily seen by any driver of any vehicle.
  - c. Every effort should be made to locate the roadblocks in an area that would minimize the probability of property damage or personal injury. Considerations include population, proximity to parks, hospitals and schools, and open areas as opposed to residential and business districts.
  - d. Police and privately owned vehicles shall not be used for roadblocks. Police vehicles may be used as a warning device with red lights operating and parked as far off of the roadway as possible.
  - e. If time permits, flares shall be placed 500 feet before the roadblocks to give adequate and appropriate notice to the pursued vehicle and all other approaching motorists.
  - f. The Communications Division shall be advised of the roadblock and all pertinent information for relay to the pursuing vehicles.

**PAGE 7/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE**

**3. Supervisor's Responsibility**

- a. A Field Supervisor shall be immediately dispatched to the termination point, if not already on the scene, and shall assume responsibility for any further police action at the scene.
- b. The supervisor shall prepare any special reports that may be required.

**VIII. POLICE VEHICLE ACCIDENTS AND DAMAGES**

**A. Accidents**

1. The following procedures shall be used when the Police Department or city-owned vehicle (including leased and confiscated) driven by police personnel is involved in an accident.
  - a. The Communication Division shall be notified of the accident, location, conditions, and persons involved.
  - b. Communications shall dispatch all necessary units:
    1. Accident Investigator;
    2. Paramedics, if needed;
    3. Tow truck, if needed;
    4. Field Supervisor assigned to the Sector. If none are available, a field supervisor from the next closest sector shall be called. A Turn Lieutenant should be dispatched only when unusual circumstances exist.
    5. City Investigator
2. The vehicle should not be moved unless directed by the Accident Investigator, superior officer, or if the vehicle is in a position to cause danger.
3. If injuries are involved:
  - a. If injured and under arrest, civilians will be sent to the nearest hospital capable of administering necessary medical treatment. If they refuse treatment, they shall be required to sign a medical release.



**PAGE 8/GENERAL ORDER 11-92  
STANDARD OPERATIONAL PROCEDURE**

- b. Police personnel (sworn or civilian) shall be sent to the nearest hospital for examination anytime injury is sustained.
- 4. All transactions between persons and officers involved in the accident shall be exchanged through the Accident Investigator.
- 5. All reports shall indicate the officers name, assignment, whether on or off duty, confidential number, and license plate number. If the vehicle was parked at the time of the accident, the name of the officer who parked the vehicle shall be included in the Incident Report.
- 6. Reports - P/I, P/D Accident
  - a. Officer - Indiana Standard Accident Report (SR 21)
  - b. Officer - Damage to vehicle report and officer's report. See Form -1
  - c. Accident Investigator - Indiana Standard Accident Report
  - d. Supervisor - Report and recommendations.
- B. Damage to Police Vehicle
  - 1. Each officer shall be responsible for checking his assigned vehicle for damage prior to moving the vehicle. If an officer fails to do so, that officer may be charged with any damages found on vehicle while vehicle is under his control.
- C. All Police Officers that are involved in accidents will be referred to the Accident Review Board and, if found to be at fault will face disciplinary action.

**GENERAL ORDER 12-92  
FAIR LABOR STANDARDS ACT**

Effective 12:01 A.M. Saturday, October 1985 this department will implement a policy to comply with the Federal Fair Labor Standards Act specifically the 207K Exemption for Police Personnel. This policy affects all police personnel except those who because of their duties and responsibilities have been clarified exempt.

All personnel will be required at the start of their tour of duty to sign an individual time sheet and also sign this time sheet at the end of their tour of duty. The Turn Commander will be responsible to assure time sheets are completed daily and are legible. Time sheets must be signed by each individual and cannot be signed in advance. These time sheets must be approved by the Turn Commander and forwarded to the Payroll Clerk, Office of the Chief, no later than 10:00 a.m. Monday following the end of a pay period. A schedule of pay period dates will be supplied.

This department has established an alternative work schedule in accordance with provisions of the Fair Standards Act which specifically covers fourteen (14) days, eighty-six (86) hours; the work week will begin Saturdays at 12:01 A.M. and end fourteen days later at 12:01 midnight. Thereafter, each succeeding work schedule will begin Saturdays at 12:01 a.m. and will end fourteen (14) days.

Turn Commanders will be responsible to monitor time sheets daily, accumulate each officers total hours, and adjust the officers weekly schedule to assure the officer does not exceed the required forty (40) hours per week.

**EXEMPT RANK POSITIONS**

Chief

Deputy Chief

Inspector

Deputy Inspectors

Commanding Officer of the Bureau of Uniform Services

Commanding Officer of the Traffic/Tactical Division

PAGE 2/GENERAL ORDER 12-92  
FAIR LABOR STANDARDS ACT

Commanding Officer of the Bureau of Investigative  
Services  
Commanding Officer of the Public Morals Bureau  
Commanding Officer of the Juvenile Aid Bureau  
Commanding Officer of Auto Detail  
Commanding Officer of Detective Division  
Commanding Officer of the Technical Services Bureau  
Commanding Officer of the Bureau of Identification  
Commanding Officer of the Internal Affairs Division  
Commanding Officer of the Training Division  
Commanding Officer of the Community Services Division  
Commanding Officer of Communications Division  
Commanding Officer Motor Transport Division  
Commanding Officer Patrol Division

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**GENERAL ORDER 12.1-92  
SWORN PERSONNEL TIME SHEET**

Effective 12:01 a.m. Saturday, October 12, 1985, this department implemented a policy to comply with the Federal Fair Labor Standards Act specifically the 207K Exemption for Police Personnel. This policy affects all police personnel except those who because of their duties and responsibilities have been clarified exempt.

All personnel will be required at the start of their tour of duty to sign an individual time sheet and also sign this time sheet at the end of their tour of duty. The Turn Commander will be responsible to assure time sheets are completed daily and are legible. Their time sheets must be signed by each individual and cannot be signed in advance. These time sheets must be approved by the Turn Commander and forwarded to the Payroll Clerk, office of the Chief, no later than 10:00 a.m. Monday following the end of a pay period. A schedule of pay period dates will be supplied.

This department has established an alternative work schedule in accordance with provisions of the Fair Labor Standards Act which specifically covers fourteen (14) days, eighty-six (86) hours; the work week will begin Saturdays at 12:01 a.m. and end fourteen days later will begin Saturdays at 12:01 a.m. ~~and end~~ fourteen days later at 12:01 midnight. Thereafter, each succeeding work schedule will begin Saturdays at 12:01 a.m. and will end fourteen (14) days.



**GENERAL ORDER 12.2-92  
OVERTIME**

In order to maintain full financial accountability/control on overtime worked on city and federal programs (development taskforce, PMD, surveillance) the following guideline is effective immediately:

No officer may claim overtime in excess of 16 hours in any 24 hour period. After working 16 hours in any 24 hour period, all additional time worked will be reimbursed with compensatory time and not at the overtime rate.

GENERAL ORDER 12.3-92  
OVERTIME

Whenever special events require the scheduling of additional duty hours, wages will be paid at one and one half (1/2) times an officer's regular hourly rate.

If an officer fails to complete his normally scheduled hours due to illness, injury, or any other unexcused absence, but is scheduled for additional duty, the additional hours will be paid at the officer's regular hourly rate.

Overtime wages will only be paid for special events; all other additional hours will be regulated by the Fair Labor Standards Act.

Officer who normally work in an exempt capacity will be entitled to overtime provisions for special events only.

**GENERAL ORDER 12.4-92  
OVERTIME GUIDELINES**

This administration was successful in its attempts to have the Gary Common Council set aside monies to pay sworn police officers who are interested in working their off duty hours.

It is clear the declining number of police officers on this Department has placed a serious burden on each and every division. However, the primary area of concern is the Patrol Division, and it is there, our efforts will be directed.

Sufficient funds have been secured to keep this program in effect. The following guidelines are initiated for those interested in participating:

1. Those wishing to participate in the overtime program will be required to sign-up in advance. Sign-up sheets will be available in the Office of the Bureau of Uniform Services.
2. Officers will be monitored on their performance, especially in the following categories: (1) Response to Radio Calls; (2) Felony Arrests; (3) Misdemeanor Arrests; (4) Traffic Citations; and (5) Parking Citations.
3. To qualify for the overtime program, an officer must have worked the prior pay period without having accumulated any sick time, or time that is considered "Absent Without Leave".
4. When an officer fails to complete his regularly scheduled hours for any reason other than Vacation Days, Days Off, or time considered Absent With Leave (A.W.L.), but has worked overtime hours - the overtime hours will not be paid at a premium rate.
5. No overtime personnel will be given special assignments, i.e., Hospital Guard Duty, Front Desk, Radio, City Hall, Roving Cars, etc.
6. For the purpose of monitoring productivity all overtime personnel will work as a group in areas or sectors as designated by the Office of the Bureau of Uniform Services or Watch Commander.



**PAGE 2 GENERAL ORDER 12.4-92  
OVERTIME GUIDELINES**

7. When there is not a sufficient number of vehicles available to accommodate the scheduled manpower, it shall be permissible to assign two (2) man action cars. However, both officers shall be of the same status, either overtime, or regularly scheduled personnel.
8. All overtime personnel will be subject to existing departmental rules, regulations, and policies.
9. All overtime personnel will be expected to perform the patrol assignments given them regardless of their rank. However, on those days when the regular turn commander is not working, and the overtime schedule contains an officer with the rank of Lieutenant or above, with the permission of the Bureau of Uniform Services, he may assume command.
10. All overtime personnel shall submit activity sheets and time sheets (yellow in color) on a daily basis.
11. Overtime personnel reporting late for roll call are subject to being replaced without benefit of notification.
12. FAILURE TO REPORT FOR SCHEDULED TOURS OF DUTY, OR REPORTING LATE FOR ROLL CALL, WILL RESULT IN MINIMAL FUTURE CONSIDERATION.



GENERAL ORDER 12.5-92  
SUSPENSION OF OVERTIME PRIVILEGES

Effective Saturday, January 11, 1992, the following procedure shall be instituted relative to disciplinary action.

An officer receiving disciplinary actions, i.e., Written Warning or Suspension Notice, will not be entitled to overtime privileges. See Below:

One (1) Written Reprimand - Suspension of one (1) week overtime privileges.

Two (2) Written Reprimands or more - Suspension of two (2) weeks of overtime privileges.

Suspension from pay and duty for one (1) day or more - Suspension of two (2) weeks or more overtime privileges.

The officer shall contact his commander after the suspension privilege period to reschedule overtime activities.

**GENERAL ORDER 13-92  
WATCH COMMANDER'S DUTIES AND RESPONSIBILITIES**

**I. PURPOSE**

This order shall establish the Watch Commander's duties and responsibilities.

**II. POLICY**

The Watch Commander shall have immediate control of the Gary Police Department in the absence of the Chief of Police, Deputy Chief, Inspector, and Deputy Inspectors.

**III. PROCEDURE**

He shall be held strictly responsible for the preservation of the public peace, the protection of life and property, and the general good order of the City. He shall be vigilant in enforcing all the laws and ordinances of the City of which the Department takes cognizance. He shall give his best efforts to the prevention of crime, investigation and solution of criminal cases, apprehension of offenders, locating of missing persons, suppression of vice and gambling in all parts of the City, and criminal investigations for other cities and fugitive requisition proceedings.

**IV. DUTIES AND RESPONSIBILITIES**

1. Insure proper performance of functions designated for each bureau, division, squad, unit and other branches of the Department, including the Auxiliary Police Division.
2. Insure the efficiency and discipline of personnel of all branches of all Divisions.
3. Check on the serviceability, proper care and use of the Department's buildings, records and equipment.
4. Make frequent personal inspections of the uniforms, equipment, and general appearance of all members of the Department.

PAGE 2/GENERAL ORDER 13-92  
WATCH COMMANDER'S DUTIES

5. Examine daily schedules and records of each division to insure accuracy and to prevent abuse.
6. Investigate reports of neglect of duty coming to his attention.
7. Supervise all personnel in the performance of their duties in the field and in the department's building.
8. Utilize resources of the Department to cope efficiently with the existing problems which arise unexpectedly while on duty.
9. Assume command and perform functions of any Commanding Officer as required during his absence as directed.
10. Notify unit commander of hazards not readily corrected by on-duty personnel.
11. Re-deploy personnel if necessary on a temporary basis to cope with emergency/staffing situations.
12. Insure that official reports are accurate and complete.
13. Advise Commanding Officers of appropriate divisions of matters of importance, unusual arrests or occurrences and importance messages or conditions requiring immediate attention.
14. Evaluate continuously the effectiveness of all assignments within the organizational structure of the Police Department.
15. Insure that disciplinary reports concerning members of the force and civilian employees of the Department, are made as required.
16. Investigate and report on injuries to members of the Department and damage to the Department property as required.



**PAGE 3/GENERAL ORDER 13-92**  
**WATCH COMMANDER'S DUTIES**

17. Initiate disciplinary proceedings against any subordinate officer (division commander, turn commander, etc.) allowing violations to occur within their command.
18. Watch Commander will provide a daily report to the Chief, Deputy Chief, Inspector/Deputy Inspector.
19. When the Public Information Officer is not on duty, the Watch Commander is responsible for News/Press Releases to all news media.
20. Watch Commander's duty station will be the Patrol Commanders Office.
21. Dress Code will consist of uniform dress unless ordered by the Chief of Police.



**GENERAL ORDER 14-92  
PROPOSED PLAN FOR POLICE PROTECTION FOR THE CITY OF GARY IN THE  
EVENT OF A JOB ACTION BY SWORN PERSONNEL OF DEPARTMENT**

**I. ASSESSMENT**

The Chief of Police or his designee upon reliable information that a job action is eminent or in progress, shall conduct a meeting with all Gary Police Department Commanders for the purpose of determining manpower requirements, deficiencies if any, and evaluating manpower needs. During this meeting all job action participants shall be identified and all information shall be reduced to writing.

Upon evaluation and determination that assistance may be needed, the following agencies will be notified immediately in the order and as indicated by the Chief of Police or his designee:

1. Lake County Sheriff's Department  
1-219-755-3300
2. Indiana State Police  
Superintendent  
1-317-232-8241
3. Office of the Governor - State of Indiana  
Special Assistant for Public Safety  
1-317-232-4579

- II.** The Chief of Police shall issue an order directing that an emergency exists and that all sworn personnel shall be on standby and available for duty on an as needed basis when ordered to report for duty by a superior officer. The order shall further provide that all vacations and off days are canceled to meet the needs of the Department.

Where the Chief of Police, in consultation with the Director of Public Safety, the Mayor of the City or his designee, determines that the available manpower is insufficient to provide the necessary police protection for the City of Gary, the Chief of Police shall re-sign sworn personnel, including Auxiliary Police, and establish work schedules to meet the department's requirement of necessary police services to the community.

PAGE 2/GENERAL ORDER 14-92  
JOB ACTION BY SWORN PERSONNEL

The Chief of Police shall, in consultation with the Director of Public Safety and the Mayor or his designee, reduce the demands for police services with an aim towards deferring services of the least priority depending upon the then existing manpower availability until such time as manpower is sufficient to conduct normal police services.

- III. Where all of the above actions have been taken and the Chief of Police, in consultation with the Director of Public Safety and the Mayor or his designee, determine that additional manpower is needed to provide critical police services to the City, assistance shall be sought first from the Lake County Sheriff. Should it be determined that the assistance provided by the Lake County Sheriff, combined with Gary City and Auxiliary Police is insufficient to provide vital police services then assistance shall be sought from the Indiana State Police. Should a determination that the combined manpower of the aforementioned agencies are insufficient to provide vital police services to the City of Gary and that an emergency exist, assistance will be sought from the Governor of the State of Indiana vis-a-vis the Indiana National Guard.

The above County and State Police Agencies have been contacted and will provide assistance as follows:

A. Lake County Sheriff's Department

1. The Sheriff will provide approximately four (4) cars and personnel per shift.
2. Helicopter Patrol as needed.
3. Additional manpower if City of Gary provide vehicles and communication.
4. Support police services such as photography and fingerprinting.



PAGE 3/GENERAL ORDER 14-92  
JOB ACTION BY SWORN PERSONNEL

5. The County Sheriff's personnel first priority will be with traffic problems and as backup for other police services.

B. Indiana State Police

1. First priority for State Police will be traffic control, then as backup support for other police services.
2. The city of Gary will be billed at a letter date for expenses incurred by State Police Personnel except for wages. This includes, but is not limited to, mileage (.22 per mile), per diem (\$15.00 per day), housing costs at a negotiated rate.

C. Indiana National Guard

1. All necessary public safety activities. All arrests shall be processed through the Gary Police Department.

IV. Procedure for Notification and Activation

A. Lake County Sheriff's Department

1. Verbal request by the Chief of Police or designee initiates Sheriff's assistance.
2. Formal request in writing from the Chief of Police or Director of Public Safety.

B. Indiana State Police

1. Verbal request to Governor's Office, Special Assistant for Public Safety, 1-317-232-4579, initiates State Police assistance.
2. Formal letter from the Chief of Police or Director of Public Safety.

PAGE 4/GENERAL ORDER 14-92  
JOB ACTION BY SWORN PERSONNEL

C. Indiana National Guard

1. Verbal request from Mayor to the Governor declaring State of Emergency initiates procedures to activate the National Guard.
2. Formal letter from the Mayor to the Governor declaring State of Emergency.
3. Confirmation of Emergency from Superintendent of the Indiana State Police.

V. Discipline

- A. Any sworn member of the Department who fails to report for his regularly assigned duties shall not be paid and is subject to disciplinary action until he establishes to the satisfaction of the Chief of Police the legitimacy of his absence(s). Likewise, any sworn member of the Department who fails to report for duty even though not scheduled when ordered to do so by a superior officer shall be subject to disciplinary action.
- B. Any sworn member of the Department who violates Departmental Orders, Directives, Rules and Regulations of the Gary Police Civil Service Commission shall be subject to immediate disciplinary action which may result in suspension and/or demotions or dismissal.



**GENERAL ORDER 15-92  
ACCIDENT REVIEW BOARD**

**I. PURPOSE**

This order shall establish the creation of an ACCIDENT REVIEW BOARD intended to handle all accidents involving police department vehicles.

**II. COMPOSITION**

This Board shall be composed of the following eight (8) members:

Bureau of Investigative Services Commander - Chairman

Patrol Commander

Traffic Commander

Hit and Run Investigator

Police Garage Supervisor

~~Three~~ (3) Uniform Officers to sit on the Board each month.

The Board will sit on the last Tuesday of each month.

**III. POLICY - PROCEDURE AND RESPONSIBILITY:**

1. Both the officer involved and his immediate supervisor will submit detailed reports concerning the circumstances of the accident to the Division Commander.
2. The Division Commander will then see that copies of these reports and any others concerning the accident are forwarded to the Deputy Chief of Police. Along with these reports he will submit a recommendation of action to be taken concerning culpability.

PAGE 2/GENERAL ORDER 15-92  
ACCIDENT REVIEW BOARD

3. The Accident Review Board will then meet, review the circumstances involved, and make a recommendation to the Deputy Chief of Police based on their findings. Every effort will be made to see that this meeting takes place within forty-eight hours of the accident.
4. The Turn Commander (Lieutenant) shall be permitted to address the Accident Review Board, and present evidence or testimony pertinent to accidents involving those under his command. He shall also be subject to mandatory appearance should the Board find his presence necessary.

**GENERAL ORDER 16-92**  
**PROCEDURE - LOST OR STOLEN LICENSE PLATES**

Effective immediately the following procedure will be followed relative to Lost or Stolen license plates:

1. Unrecovered stolen plate(s) may be entered into file if a theft report has been made.
2. Entries are usually limited to instances where all plates issued are reported stolen. In a two-plate State where only one plate is reported stolen, an entry is permitted provided the entering agency is assured the remaining plate will not be on a vehicle. IN ADDITION, an owner may not know whether his/her license plate has been stolen or lost. He/she should then report it to the police/Bureau of Motor Vehicle as stolen and complete a theft report. The record could then be entered into N.C.I.C. provided that the same license plate number is not reissued or the remaining second plate will not be used.

When the police officer prepares the stolen or lost license plate report from the complainant, he/she is to explain the above procedure.



GENERAL ORDER 17-92  
COMMUNICATIONS ROOM PROCEDURES

The following procedures will be implemented immediately by all personnel of the Communications Division:

1. Uniforms will be worn by all sworn personnel.
2. All personnel will report ten (10) minutes before the hour to relieve on duty personnel.
3. All schedules will be prepared to reflect the status of all personnel and submitted to the Office of the Chief thirty (30) minutes after the start of the turn. The midnight turn will place their schedule in the Chief's basket in the Technical Services Bureau - Desk area.
4. All due days or extra days off will be approved by Communications Commander prior to taking day(s) off.
5. All personnel will be present in Radio Room for the entire scheduled shift, with an exception - one (1) hour lunch. No other exception.
6. Call-offs and calls of lateness will be placed to the Commander (Chief's Office) when possible. If not able to contact Commander, personnel must report off to the supervisor on duty in the Radio Room. No exceptions.
7. Supervisors receiving call-offs and tardy reports will document information and forward to Commander. No exceptions.
8. All cards and messages presented to Dispatcher will be acted upon promptly.
  - a. Backlog of all calls in given district; It's your responsibility to notify field supervisor.
  - b. Under no circumstances, no call is to be held more than 30 minutes. Backlog calls will be given to supervisor for him/her to take.



PAGE 2/GENERAL ORDER 17-92  
COMMUNICATIONS ROOM PROCEDURES

9. All cards will be inspected by the Dispatcher for completeness.
10. It is the responsibility of the Dispatcher to oversee any and all announcements.
11. It is the responsibility of the Dispatcher to point out the failure to radio operating procedures on the part of field personnel.

Example A: 10-20 not given  
B: 10-23 not given  
C: Two radios turned on in the same vehicle causing feedback.

The Dispatcher should also bring it to the attention of the supervisor for corrective action.

12. It is the responsibility of the Dispatcher to give call letter announcement, approximately every one (1) hour, (60 minutes).
13. Names will not be used when Broadcasting.
14. All action calls (Break-In in Progress, Large Disturbances, Armed Robbery, simicast, preceded by Alert Tone).
15. The Dispatcher and supervisor are responsible for keeping background noise in radio room to a minimum.
16. In the absence of a supervisor and/or sworn personnel, the senior technician is responsible for the Radio Room.
17. It is the responsibility of all radio personnel to make certain, only authorized persons are in the radio room.
18. Whenever possible, codes will be used when dispatching.
19. If a district car is involved in a minor situation and a more serious call is pending, the dispatcher will re-assign this unit.

**PAGE 3/GENERAL ORDER 17-92  
COMMUNICATIONS ROOM PROCEDURES**

20. The dispatcher has the responsibility for advising field units of the proper channel use:

Example: 10-28, 10-29 - tow trucks, etc., Channel 2  
car to car traffic - Channel 3

21. After attempting to call any units three (3) times, without acknowledgement, the supervisor will be notified.
22. The dispatcher must remember the field officer does have other responsibilities in addition to listening to his radio. Be patient and courteous.
23. When hearing a P-Unit with poor transmission, dispatcher will note location of officer and location of tower transmitting. This information will be placed on log.
24. It is mandatory that all personnel know the operational procedure for the equipment in the radio room.
25. It is the responsibility of all personnel to bring to the attention of their supervisor if they do not know standard operating procedures for the operations of any and all equipment.
26. It is the responsibility of the dispatcher for the opening and closing of garage doors.
27. Every person will be responsible for cleaning the lounge after they use it. No dirty dishes will be left in the sink. All utensils will be put away after being used.
28. No personnel will leave the radio room for any reason without first gaining permission from the supervisor on duty.
29. All personnel are responsible for keeping their work area clean.

PAGE 4/GENERAL ORDER 17-92  
COMMUNICATIONS ROOM PROCEDURES

30. The dispatcher will be responsible for announcing signal 500, whenever an officer calls for assistance. Signal 500 transmission will be on channel one (1) only. All other transmissions will go to Channel 2 until re-advised by Channel one (1) operator - unless involved in assistance.
31. NO UNAUTHORIZED PERSONNEL WILL BE ALLOWED IN RADIO ROOM.

Each individual is responsible for the above listed procedures - the police supervisor has overall responsibility to make sure that these procedures are adhered to.

The turn supervisor will see that each employee receives a copy of this directive, read and understand it, and implement it fully.



**GENERAL ORDER 17.1-92  
COMMUNICATIONS PROCEDURE  
FIELD OFFICER/RADIO DISPATCHER**

**I. PURPOSE**

The purpose of this order is to establish proper radio procedures between the officer in the field and the Communications Center. This will eliminate confusion and establish continuity by utilizing correct procedures.

**II. POLICY**

All officers shall be held in violation of this order for failing to comply as described in Section III

**III. PROCEDURE**

The proper method of responding to the Communication's Dispatcher when being given an assignment will be as follows:

- A. When responding to the initial call from Radio or any other unit, the field officer will give his unit number, P unit number or Sector number - as it may apply, and location (10-20).
- B. After being given the assignment, the field officer, will indicate to the radio dispatcher, that he has received and understands the message.
- C. Upon arrival at said assignment the officer shall notify the radio dispatcher by using the National Code Number (10-23),
- D. Upon completion of assignment, the officer shall notify the radio dispatcher by using the National Code number (10-24) and give disposition to the call.
- E. In the event a responding officer is detained between the time of being given the assignment, and the time of arrival, he shall report to the dispatcher the circumstances of the delay. The radio dispatcher will then duly record the delay by making the appropriate entry on the dispatch data card.



PAGE 2 GENERAL ORDER 17.1-92  
COMMUNICATIONS PROCEDURES

F. No message, except an emergency message should be transmitted until communications have been established between the control dispatcher and the Field Unit.

G. SIGNAL 500

Effective this date a Signal 500 will be placed into effect whenever an officer or supervisor determines an emergency situation exists and all radio traffic should stop on Channel 1 until the emergency situation clears. All regular traffic not involving the Signal 500 will go to Channel 2. Communications will not implement the Signal 500. It must be initiated and cleared by the officer or his supervisor.

F. Effective this date, radio traffic will be conducted on the following channels:

1. Channel One - Regular Dispatch/City wide
2. Channel Two - Information/10-28/10-29/warrants
3. Channel Three - Car to Car/Special Assignments

Patrol supervisors picking up reports should request headquarters to announce that units with reports go to Channel Three. Car to Car traffic should be kept to a minimum on Channel One.

**GENERAL ORDER 17.2-92**  
**DETAIL ASSIGNMENT - COMMUNICATIONS**

Whenever a manpower shortage occurs in the Communications Division and a request is made by the Communications Division's supervisor for assistance, an officer from the Patrol Division or the Auxiliary Section shall be detailed to Communications for assignment.

Be advised that there shall be four (4) persons manning the Radio Room on the day turn (8 a.m. to 4 p.m.) and evening turn (4 p.m. to 12 midnight). The midnight turn (12 a.m. to 8 a.m.) can operate with three (3) persons.

**GENERAL ORDER 17.3-92  
IDACS - WANTED FILES  
VALIDATION PROCEDURES**

The purpose of this order is to instruct each Division Commander and personnel assigned on the proper IDACS - Wanted Files - Validation Procedures. Validation print-outs are received by this department on - approximately the 25th day of each month.

1. The IDACS Coordinator or designee shall distribute validation print-outs to each Division within 24 hours after receipt by this department.
2. Each Division Commander or designee shall sign for receipt of the validation print-out.
3. Division Commanders or designees shall confirm that the wanted files are active or in-active.
4. Once this procedure is completed, validations print outs shall be returned to the Communications Division's IDACS Coordinator or designee no later than the 12th day of each month. TIME FACTOR IS IMPERATIVE.
5. IDACS Coordinator or designee shall sign for updated print-out upon receipt.
6. IDACS Coordinator or designee receiving completed validation print-outs from required Divisions shall place the validation print-outs in the designated location to be processed by all IDACS operators.
7. Once all validations print-outs are completed by the Communications Division's personnel, print-outs shall be returned to Division Commanders or designees. It shall be the responsibility of the Division Commander to review, verify and confirm that the validation process was properly and correctly entered.

PAGE 2/GENERAL ORDER 17.3-92  
IDACS VALIDATION PROCEDURES

8. The Communications Division shall submit to the Office of the Deputy Chief, by the 21st of each month, a complete report indicating that the validations were timely processed.



**GENERAL ORDER 18-92  
TELE-SERVICE TECHNICIAN**

The Tele-Service Technician will perform the following (1) follow-up investigations on stolen auto, theft for, criminal mischief to, and unauthorized control of motor vehicles; (2) file case cards on all new incoming cases and match the release forms with all tow-ins and recovered vehicles.

**1. JOB RESPONSIBILITIES**

- A. With the aid of the telephone the Tele-Service Technician contacts the victims or complainants to gain additional information relevant to the investigation of stolen auto, theft from criminal mischief to, and unauthorized control of motor vehicles.
- B. With the aid of the telephone the Tele-Service Technician will notify the complainants or victims of the location of their vehicle or property from vehicle whenever possible.
- C. With the aid of the telephone the Tele-Service Technician will refer the complainants or victims to the proper office within the department or to an investigator to assist in the recovery of the vehicle or property in question, when possible.
- D. Any additional information submitted by the victims or the complainants will be recorded and referred to the proper office of to an investigator to help expedite the investigation.
- E. The Tele-Service Technician will assist the complainants or victims with questions or complaints they may have and refer to the proper office or an investigator to help expedite the investigation.
- F. The Tele-Service Technician will properly file all case cards for new incoming cases.

PAGE 2/GENERAL ORDER 18-92  
TELE-SERVICE TECHNICIAN

G. The Tele-Service Technician will match the release forms to the tow-ins and recovered vehicle reports.

2. NECESSARY QUALIFICATIONS:

Ability to read and write the english language;

Ability to record, transmit and communicate information properly;

Ability to maintain a good interpersonal relationship with co-workers and others in the department;

Ability to ask questions and give intelligent answers;

Must have good communication skills; and have

Knowledge of all the necessary report forms to do the job efficiently and effectively.

**GENERAL ORDER 19-92  
EFFECTIVE DATA QUALITY CONTROL**

**I. PURPOSE**

To insure that the Gary Police Department data records information is complete and accurate.

**II. DESCRIPTION**

Currently, the basic standard by which to measure all police-generated reports is our daily bulletin. Therefore, we must ensure that all reports listed on our daily bulletin are entered into the computer system on a timely basis.

- III.** This can be accomplished by performing a periodic comparison of data records entered by any particular department against the daily bulletin's listing of the associated reports (i.e. Data Entry Records will compare offense, vehicle tow, and auto theft reports against the case numbers listed on the daily bulletin; Bureau of Identification will compare adult arrest against the daily bulletin; Juvenile will compare juvenile arrest against the daily bulletin). The comparison will yield information regarding any missing reports slated for entry into the computer system. It is each department's responsibility to ensure that all reports designated for entry by that department are entered.

In the case of accuracy, one should never assume when entering a record. If the correct procedure for entering a record is not known, then the operator should contact their supervisor or the computer systems manager for assistance. If the operator enters an error, it is that person's responsibility to modify the record and eliminate the error.

The computer system manager will perform periodic data quality control checks and inform the department supervisor of any errors found in the course of his data inspection.



GENERAL ORDER 19.1-92  
DATA ENTRY PROCEDURES FOR  
ARRESTED INDIVIDUALS

I. PURPOSE

To generate identification numbers for all arrested persons. It is imperative that all persons arrested by the Gary Police Department personnel shall have individual identifying numbers.

II. PROCEDURE

The Bureau of Identification will no longer be required to pick up Offense Reports from the Desk Sergeant.

The Bureau of Identification statistician will be responsible for entering into the computer system all arrest reports.

The yellow copy of the arrest report shall be used to enter data into the computer system.

Instructions will be provided by the System Manager of Computer Information Services, this department.



**GENERAL ORDER 19.2-92  
DATA ENTRY PROCEDURES FOR  
ARRESTED JUVENILES**

**I. PURPOSE**

To generate identification numbers for all arrested persons. It is imperative that all juveniles arrested by the Gary Police Department personnel have individual identifying numbers.

**II. PROCEDURE**

The Juvenile Aid Division will be responsible for all identifications numbers of arrested juveniles.

The Juvenile Aid Division stenographer will be responsible for entering all juvenile arrest records into the computer system.

Instructions will be provided by the System Manager of Computer Information Services, this department.

**GENERAL ORDER 20-92  
BONDSMAN PROCEDURES**

1. Bondsmen are not to enter the Front Desk area at anytime for any reason. They are to remain in the lobby area.
2. Bondsmen are not to go to the Bull Pen area to talk to any prisoner.
3. Bondsmen are prohibited from obtaining from the Gary Police Department ARREST FORMS and are not to view the DAILY IN CUSTODY JAIL SHEET for any reason.
4. Bondsmen are not to hand out Business Cards to people in the lobby of the Police Station.
5. Bondsmen are not allowed to give business cards to MINISTERS on Sunday Morning for the purpose of passing them on to in custody prisoners.
6. Police officers are not to call the Bondsman; The person hiring the Bondsman is to make the call himself. This person will be allowed to use the Gary Police Department telephone to make such call. NO RECOMMENDATION shall be made by officers.
7. Bondsmen ARE NOT to sit in their vehicles outside the station to solicit business.
8. ~~Bondsmen~~ doing business at the Gary Police Department are to write the Bond and then leave the Police Station. AT NO TIME are they to LOITER in the Police Station lobby.

**GENERAL ORDER 21-92  
GARY POLICE LEGAL ADVISOR**

**I. REQUIREMENTS**

Graduation from an accredited School of Law with the Degree of Juris Doctor or equivalent, successful completion of the Indiana State Bar examination with at least three (3) years engaged in the active Practice of Law.

**II. DUTIES**

**ADVISOR FUNCTION**

When needed and available the Legal Advisor will review cases which the investigative division files with the officer of the Lake County Prosecutor and will also provide Legal advice and counsel to the office of the Chief of Police and to those department division heads and supervisors designated by the Chief.

**TRAINING FUNCTION**

The legal advisor will design and construct a course of instruction in Constitutional Law applicable to Police Law Enforcement duties to be taught to regular and auxiliary Police Officers of the Gary Police Department.

**PUBLIC INFORMATION FUNCTION**

When needed and available the Police Legal Advisor will serve as an additional Public Information Officer.

**DRAFTING FUNCTION**

In conjunction with the City Law Department the Police Legal Advisor will draft, as needed, proposed City Ordinances requested by the Chief of Police on which the City Law Department requires assistance.



**PAGE 2/GENERAL ORDER 21-92  
POLICE LEGAL ADVISOR**

**LIAISON OFFICER FUNCTION**

The Gary Police Legal Advisor at the direction of the Chief of Police or the Director of Public Safety will serve as a liaison officer between the Gary Police Department and all criminal courts, Law Enforcement Agencies, educational institutions, private industry and other organizations as needed for the purpose of obtaining any information which may enhance the operation efficiency of the Gary Police Department and will advise the Chief of Police of information so obtained.

**COUNSEL ON CALL FUNCTION**

The police legal advisor will be on call by radio, by telephone or by pager depending on conditions of duty assignment primarily but not exclusively during the evening shift under an assignment to the Detective Division without case assignments. The Legal Advisor will respond to all calls not as an investigator but as an attorney providing legal counsel as needed to the Police Chief and his designated supervisors.

**AUTHORITY**

The police legal advisor is authorized to obtain from other divisions within the department any and all information required to enable his functioning as advisor to the Police Chief, Public Information Officer, and liaison officer to the courts and prosecutor.



PAGE 3/GENERAL ORDER 21-92  
POLICE LEGAL ADVISOR

#### LEGAL RESEARCH

The police legal advisor will research the law on issues which affect the Gary Police Department and its operations as the need arises on the advisor's own direction or that of the Police Chief or Director of Public Safety. Resources for said research include the Gary City Law Department volumes when available. When the need for resources beyond those locally available arises the legal advisor is encouraged to utilize the law libraries of Indiana University, and other nearby law schools.

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**GENERAL ORDER 22-92**  
**LOSS OF DEPARTMENT ISSUED EQUIPMENT**

Effective immediately, any officer who loses department issued equipment, i.e. weapons or radios, will be required to reimburse the department, the fair market value of the item at the time of loss.

If an officer loses department issued equipment he/she is to submit a written report to his commander. The officers commander will investigate as to the validity of the officer's report and then submit his findings in writing to the Chief's Office. The officer will not receive replacement equipment until his report is submitted.

**GENERAL ORDER 23-92  
THE CITY OF GARY'S  
DRUG-FREE WORKPLACE POLICY**

This is official notification that as an entity covered by the Drug Free Workplace Act of 1988, and to protect the City of Gary's status as a responsible source for the award of federal contracts, the following policy will be strictly enforced:

Effective August 1, 1991 any location where City of Gary business is conducted is declared to be A DRUG-FREE WORKPLACE. This means:

- I. All employees are absolutely prohibited from the use, sale, dispensing distribution, possession, or manufacture of illegal drugs and narcotics, drug paraphernalia or alcoholic beverages on City premises, in City owned-vehicles or on City time.

Any employee violating this policy will be severely disciplined, up to and including termination for the first offense.

Any employee convicted of violating a criminal drug statute in the workplace must inform the Personnel office of such a conviction (including pleas of guilty or nolo contendere) within five (5) days of the conviction occurring. Failure to so inform the Personnel office will result in severe disciplinary action, up to and including termination for the first offense. By law, the City of Gary will, if a federal contract is involved, then notify the appropriate federal contracting officer within ten (10) days of receiving notification from an employee or otherwise receiving notice of such conviction.

- II. All employees will receive a copy of this policy in its entirety and will receive a prescribed number of hours of education about the dangers of alcohol and drug abuse in the workplace. All supervisors will receive a prescribed number of hours of supervisory training to assist in identifying and addressing illegal drug and alcohol use by employees.

- III. All employees will receive information regarding the City of Gary's Employee Assistance Program. The City of Gary reserves the right to offer employees, convicted of violating a criminal drug statute in the workplace, participation in an approved rehabilitation or drug abuse assistance program, with the employee required to participate satisfactorily as a condition of continued employment.



However, it is the City of Gary's position that these resources are best used voluntarily before workplace problems occur. If an employee has failed to avail him or herself of such help and such problems do occur, the City of Gary will have little choice but to act severely against such abusers in the interest of protecting all of our employees.

- IV. The City of Gary shall establish a drug testing program to be implemented by duly authorized assessment centers for determining whether possible substance abuse exists.

Occasions for which drug testing will be ordered will include but not be limited to:

a) pre employment -- All city positions that, by the Director of Personnel, the City Attorney and the Mayor, are deemed to directly involve the public's safety will be required to submit to a drug/alcohol test.

b) post employment -- reasonable suspicion  
An employee shall be required to submit to drug/alcohol testing when the presence or occurrence of specific, objective facts or events, which have been accurately documented in writing, allow for reasonable suspicion that an employee is under the influence of illegal drugs or alcohol.

c) post employment -- promotion  
Any employee being considered for transfer or promotion to a position of increased responsibility may be required to submit to drug/alcohol testing if the new position is deemed by the Director of Personnel, the City Attorney, and the Mayor, to directly impact on the public's safety.

- V. A Drug Free Workplace Committee will be appointed to ensure compliance with each component of this Drug Free Workplace policy.

ALL EMPLOYEES ARE ASKED TO ACKNOWLEDGE THAT THEY HAVE BEEN INFORMED OF THE ABOVE POLICY AND AGREE TO ABIDE BY IT IN ALL RESPECTS. BY LAW, SUCH ACKNOWLEDGEMENT AND AGREEMENT ARE REQUIRED OF YOU AS A CONDITION OF CONTINUED EMPLOYMENT.

I. Policy Statement

The above policy is published to notify all employees that the illegal presence of drugs and alcohol in the workplace is strictly prohibited and to specify what steps will be taken if the policy is violated.



**A. Background**

Illegal drug use and excessive alcohol use is prevalent in the workplace and endangers fellow workers, security, public safety, employee morale, production and services. It is estimated that one (1) out of every ten (10) American workers have their productivity impaired by substance abuse. It is also estimated that substance abusers are three (3) times as likely to be involved in on-the-job accidents, are absent from work twice as often, and incur three (3) times the average level of sickness costs as non users. The total costs to the economy of substance abuse is estimated to be over \$100,000,000,000 annually. Illicit drug use and alcohol abuse is responsible for a substantially higher tax rate to pay for local law enforcement protection, border control, and the cost of investigation, prosecution confinement, and treatment.

The City of Gary, as an employer, is particularly concerned about the devastating effects illegal drugs and alcohol abuse have on individuals and on society. The City of Gary also recognizes that its most valuable asset is its employees, and its most important responsibility is to the public that they serve. Therefore, this Drug-Free Workplace policy is an important step that has been taken to attempt to alleviate this problem.

**B. The Law**

The Drug-Free Workplace Act of 1988, passed the last day of the 100th Congress as a part of the massive federal anti-drug program, in a sense "drafted" many of the nation's businesses into the war against substance abuse. For the first time, any business doing even minimal business with the federal government (a single contract of \$25,000 or more) was required to maintain a drug free workplace — or face such severe penalties as LOSS OF CONTRACT, SUSPENSION, OR EVEN DEBARMENT FROM ALL FEDERAL BUSINESS FOR UP TO FIVE (5) YEARS.

To comply with the Drug-Free Workplace Act, there are these four tasks:

1. Publish a policy prohibiting the illegal presence of controlled drugs in the workplace, and distribute to all employees. It must be verified in the process that all employees agree to abide by the policy as a condition of continued employment.

2. Establish an awareness program for employees on the dangers of drug abuse in the workplace and fulfill the employees' right to know about any help that is available in combating drug problems (Employee Assistance Programs, community programs, informal counseling, etc.)
3. Require employees to notify you about any convictions they receive for violations of criminal drug statutes in the workplace within five (5) days of such conviction, then report each conviction within ten (10) days thereafter to the contracting or grantor federal agency.
4. Within thirty (30) days of the time you learn of a conviction, either discipline the employee in an appropriate manner, up to and including termination, or as an alternative, offer help in combating his or her drug problem. This help must be in the form of a drug abuse assistance or rehabilitation program approved by a governmental health agency or other agency. If you elect to offer such help, and the employee accepts it, it's then your responsibility to verify that the employee satisfactorily carries out the program as a condition of continued employment.

## II. The Awareness/Education Component

The purpose of the Awareness/Educational component is to have the entire workforce aware of and educated to the devastating effects of alcohol and drug abuse in the workplace. The goals are to provide important, timely, factual information about the hazards of alcohol and drug abuse in the workplace, as well as provide in-service training to all employees. Another important aspect of this component will be the supervisory training on chemical dependency with a specific focus on effective employee communications.

### A. The Awareness Program

Each month employees will receive some information about Alcohol and Drug Abuse in the Workplace. Each department will be required to create a drug-free awareness environment through the use of conspicuously displayed posters, signs, and recorded phone messages where available etc.



## **B. The Educational Program**

### **1. For Employees**

Each employee will receive a minimum of two (2) hours of education on the issues of alcohol and drugs in the workplace. These instructional sessions will be mandatory and will focus not only on the negative effects alcohol and drug abuse have on the workplace, but also the negative effect it has on the family and the community. During these in-services information about qualified rehabilitation programs and employee assistance programs will be distributed.

### **2. For Supervisors**

Each supervisory level employee will receive a minimum of four (4) hours of in service training on chemical dependency with a focus on effective employee communications. These instructional sessions will also stress how to document compliance with the drug-free workplace policy.

## **III. The Employee Assistance Component**

The primary goal of an employee assistance program (EAP) is to provide an effective, confidential, non-threatening environment in which an employee can seek help without the fear of career damage.

### **A. The Background**

The purpose of the employee assistance component is to help employees deal with personal problems that are affecting their work including those dealing with alcohol and drug abuse. It is estimated that over 70% of those employees seeking help through an employee assistance program have their difficulties based in alcohol/drug use themselves or some member of their family.

### **B. The Criteria**

Any facility selected to provide an Employee Assistance service to the City of Gary must meet the following criteria:

1. must be able to offer assessments by trained professionals
2. must offer a detoxification program
3. must offer a certified rehabilitation program

4. must have a certified aftercare program
5. must offer intensive and less intensive outpatient services
6. must offer support groups
7. must offer drug screening
8. must offer comprehensive family counseling services
9. must offer community awareness programs
10. must work cohesively with the City of Gary by providing some of the employee education and supervisory training.

When an employee is required to seek help through an EAP the employee must select one that meets the above stated criteria. From the time the employee receives this requirement in writing by certified mail, he or she will have ten (10) working days during which to show proof of attendance from an EAP that meets the above criteria.

Before an employee can return to the workplace he or she must bring certification of successful completion from the EAP program before that employee can be reinstated.

When an employee is encouraged to seek help through an EAP, the employee may select an EAP that meets the criteria or any counseling situation that may meet their needs. A certificate of attendance and/or completion may be voluntarily supplied to the Personnel Director.

#### C. Memoranda of Understanding

An Employee Assistance Program is available to all employees of the City of Gary and their families. This program offers assistance to all who desire help for an alcohol or drug abuse problem, a marriage or family problem, an emotional or behavior problem, as well as assistance in other troubled areas in an employee's life. All contact with the employee assistance program will be confidential.



The City of Gary has executed Memoranda of Understanding with St. Mary Medical Center, in Gary and Hobart, Our Lady of Mercy in Dyer and Kingwood Hospital, Michigan City to provide employee Assistance Services for City of Gary employees. They will also serve as assessment centers for any evaluations that may be needed.

The Employee Assistance Program is not intended to replace, or be a substitute for, the supervisor's responsibility in any area involving orders, policies, rules, regulations, or directives of any kind which relate in any way to the subject of alcoholism and drug addiction. Seeking help for problems through the Employee Assistance Program will not in itself be grounds for disciplinary action. The function of the Employee Assistance Program is to bring the proper aid to the employee who needs it.

#### IV. Drug Testing Component

This component is necessary in order to preserve and protect the integrity of the City of Gary, its personnel and to guard against the harmful consequences to public good occasioned by the unauthorized, unlawful use of, or the illegal trafficking in, illicit drugs by city employees and to preserve and maintain a high degree of public confidence in all those charged with the responsibility of administering city government.

##### A. Background

To reduce the incidence and prevalence of alcohol and drug abuse in the workplace and to promote and foster confidence in the services provided by the City of Gary, a system of identifying as early as possible an employee who is abusing drugs must be established.

The goals of an effective drug testing program should be to:

1. establish uniform policies and procedures to govern its administration
2. test for drugs which have a high potential for abuse, and for which there is no safe protocol for medical use, when there is reasonable cause to suspect its use in the workplace.
3. to encourage and/or require an employee found to be using drugs to seek rehabilitation.

## **B. The Methodology**

A Drug Free Workplace Compliance Committee will be appointed by the Mayor to oversee compliance with all of the conditions of the drug-free workplace Act.

One of the initial responsibilities of the committee will be to establish uniform procedures in the three (3) areas where drug testing will be required.

### **1. Pre employment**

All applicants for a vacant position for the City of Gary will be required to be tested for the presence of illegal or abused substances in the urine, if the position for which they are applying has been deemed one that directly affects the public safety.

### **2. Post employment -- reasonable suspicion**

Any employee may be required to submit to a urine, blood or breath test for chemical analysis to determine the presence of drugs that are commonly abused when there is reasonable suspicion.

Reasonable suspicion shall be defined as the presence or occurrence of specific objective facts or events that the employee is at the time of suspicion, under the influence of drugs and/or alcohol. Such facts or events ~~must~~ be documented in writing, and must be observed by at least one (1) other supervisory level employee and may include but not be limited to the following:

- a. ~~observed possession or use of drugs or alcohol by the employee on the job or prior to reporting off duty.~~
- b. the smell of marijuana or alcohol on the employee's person
- c. the occurrence of an accident or incident involving personal injury or damage to property when there is no reasonable explanation for the occurrence thereof.
- d. mood swings, agitation, hyperactivity, explosiveness, violence, combativeness, or other remarkable behavior that is uncharacteristic of the employee.
- e. excessive absenteeism, tardiness, or other significant documented changes in job performance.

183



### 3. Post employment -- promotion/transfer

Any employee being considered for a promotion or transfer or assignment from a position not directly involving the public safety to a position directly involving public safety will be required to submit to a routine physical examination to determine the employee's fitness to perform the new duties and responsibilities required of the new position. Such examination at the discretion of the Personnel Director, the City Attorney and the Mayor may include a drug screen for more commonly abused substances.

#### C. The Follow-up

Whenever an applicant or employee's urine, blood or breath samples test positive for the presence of drugs the sample shall be subjected to a more scientifically accurate confirmatory test.

If the confirmatory test is positive, the applicant or employee may request that an independent confirmatory test be conducted on the sample. The request shall be made in writing to the Personnel Director within five (5) calendar days of the date on which the employee receives the results of the initial test. The facility to perform the confirmatory test shall be selected by the applicant or employee from a list of laboratories approved and on file with the Department of Personnel.

An applicant whose test results on the final confirmatory test are positive shall be denied employment, unless there is an explanation for the positive results acceptable to the assessment center and review by the Mayor.

An applicant who is required to submit to a drug test because of the nature of the position being applied for, but refuses to execute an appropriate consent form for submit to the required test, will be denied employment.

When it has been determined that an employee's final confirmatory test is positive, the employee may be referred to the Employee Assistance Program for evaluation, diagnosis, and treatment coordination. If the Employee Assistance Program recommends treatment, the employee shall be required to participate in, and successfully complete the treatment plan that is recommended. The City of Gary must be able to verify his or her participation in, and successful completion of the treatment plan. Failure of the employee to successfully complete the treatment plan or to execute appropriate releases may result in disciplinary action up to and including termination.

118

Any employee who is required to submit to drug testing and who refuses to execute the appropriate releases, or to submit to the required test will be subject to discharge.

**V. The monitoring Component**

The purpose of the monitoring component will be to ensure that all of the objectives of the Drug-Free Workplace policy are being met and that the City of Gary is in 100% compliance with the Drug-Free Workplace Act of 1988.

**A. The Committee Structure**

The Mayor will establish a seven (7) member Drug-Free Workplace Compliance Committee. The make up of the committee will be as follows:

1. one member from the personnel department
2. one member form the law department
3. one union representative
4. one staff person from an Employee Assistance Program
5. The Health Commissioner
6. one female employee (elected from the general staff)
7. one male employee (elected from the general staff)

**B. The Responsibilities**

The immediate responsibilities of the Drug-Free Workplace Compliance Committee will be to establish the procedures necessary to comply with each aspect of the policy. The committee will also review all instances requiring drug testing to assure uniformity of disciplinary actions.



**GENERAL ORDER 23.1-92  
DRUG SCREENING OF PROBATIONARY OFFICERS**

**I. PURPOSE**

This order assigns responsibility and establishes procedures to be used by the Police Department, Surgeon, when performing Drug Screen testing on probationary officers of the Gary Police Department.

**II. RESPONSIBILITIES AND PROCEDURE**

1. The office of the Police Surgeon shall maintain a list of those applicants who have successfully completed all medical requirements and are approved for appointment to the Department.
2. During the first year of employment, each Probationary Officer will be subject to random screening. These test will be conducted by the Police Surgeon, and done at his discretion.
3. Notification can be made directly through the officers' supervisor, or by contacting the Personnel Officer. Upon notification, said officer shall report immediately to the office of the Police Surgeon.
4. In the event of refusal by the officer to comply, or detection of any controlled substance, the Police Surgeon shall immediately notify the Chief of Police in written form.

**GENERAL ORDER 24-92  
DOMESTIC VIOLENCE POLICY**

The purpose of this general order is to establish guidelines for police response to domestic disturbance calls, including, but not limited to, incidents involving violence.

**POLICY**

Domestic violence is a serious crime against the individual and society. This crime produces disharmony in families, leads to escalating violence, and may culminate in intra-family homicide, as well as creates an unhealthy atmosphere for childhood development. The definition of domestic violence includes bodily injury, or the infliction of fear of imminent bodily injury, between family or household members. Bodily injury is any impairment of physical condition including physical pain. (I.C. 35-41-1-4)

Family/Household - Includes persons who:

1. Are legally married to one another.
2. Are related by blood.
3. Were formerly married to one another.
4. Are related by marriage.
5. Have a child in common, regardless of whether such persons have been married or have lived together at any time.
6. Are not legally married, but are currently living together in a family-type relationship.
7. Have a boyfriend/girlfriend relationship.
8. Are not legally married, but formerly lived together in a family-type relationship.

It shall be the policy of the Gary Police Department to respond to all calls of domestic violence. In response to such calls, officers shall conduct detailed preliminary investigation to include victim/witness interviews and evidence collection. If the preliminary investigation establishes probable cause that a crime has been committed, the Gary Police Department supports Battery arrest as a preferred response to domestic violence.



**PAGE 2/GENERAL ORDER 24-92  
DOMESTIC VIOLENCE POLICY**

**TYPES OF ARREST POSSIBLE**

There are a variety of arrest alternatives available to an officer to protect victims from the offender. Arrest may be made for felony as in any criminal case. Warrantless arrest on misdemeanor charges is also possible under conditions discussed below:

**A. Battery (I.C. 35-42-2-1):**

1. An officer may arrest a person for battery when the officer has probable cause to believe the person is committing or attempting to commit a battery in the officer's presence.
2. Moreover, under I.C. 35-33-1-1(a), an officer may arrest a person for a Class A Misdemeanor when battery was not committed in the officer's presence when the officer has probable cause to believe that the person has committed a battery resulting in bodily injury (any impairment of physical condition, including pain.)
3. Arrest shall be made without regard to:
  - a. Whether the parties are married or living together.
  - b. Whether the aggrieved person has sought or obtained a legal restraining or vacate order.
  - c. Whether the aggrieved person has instituted divorce proceeding.
  - d. Whether the aggrieved person has called for police protection previously and has not pursued, or has ~~withdrawn~~, the criminal complaint against the abuser.

**B. Violations of protective or restraining orders (Arrest procedures "Invasion of Privacy", I.C. 35-46-1-1.5):**

1. An officer may arrest a person for Invasion of Privacy, a Class B Misdemeanor, when the officer has probable cause to believe the person is committing or attempting to commit an intentional violation of:
  - a. A protective order issued under I.C. 34-4-5.1.
  - b. A temporary restraining order issued under I.C. 31-1-11.5(b).
  - c. An order issued as a condition of pretrial release or pretrial diversion requiring the person to refrain from any direct or indirect contact with another person.

PAGE 3/GENERAL ORDER 24-92  
DOMESTIC VIOLENCE POLICY

C. Criminal Recklessness (I.C. 35-42-2-2(c)(1):

A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person commits criminal recklessness, a Class D felony.

PROCEDURES

A. ON SCENE INVESTIGATION:

The purpose of any on-scene investigation is to establish "probable cause" through: Interviewing of all parties, recording statements, preserving the crime scene, and collecting evidence. The probable cause standard applied to family violence crimes is no different from the standard applied to other crimes.

B. When responding to a family violence call, the officer(s) will:

1. Restore order by separating all parties involved and attempting to calm them;
2. Assess the need for medical attention and procure same if necessary;
3. Interview all parties separately (the victim, the offender, and witnesses) using supportive interviewing techniques. (Children should be interviewed in a manner appropriate to their age.)
4. After each party has been interviewed separately, confer as a team to decide if any arrest should be made and/or other actions taken;
5. When appropriate, photograph injuries and property damage;
6. Collect and record evidence;
7. If the offender has left the scene and it has been established that a crime has been committed, officer(s) shall:
  - a. Conduct a search of the immediate area;
  - b. Obtain information from the victim(s), and the witness(s) as to where the offender(s) might have fled;



PAGE 4/GENERAL ORDER 24-92  
DOMESTIC VIOLENCE POLICY

- c. If appropriate, refer the matter to the investigative unit.
- 8. Officers must fully document their responses to every domestic violence call on the appropriate form regardless of whether or not a crime has been committed or an arrest has been made;
- 9. In those instances where probable cause exists and no arrest has been made, the responding officer shall document the reasons for not making an arrest.
- 10. If an arrest is made, officers should emphasize to the victim and the offender that the criminal action is being initiated by the State, not the victim.

OTHER LAW ENFORCEMENT ACTION

- A. Other crimes: An officer may affect an arrest for crimes other than those discussed above when appropriate probable cause exists to justify an arrest.
- B. Citizen complaints: An officer shall make a reasonable effort to inform victims of options for citizen initiated prosecution through complaints to the Prosecutor's Office, when the officer feels a lack of probable cause exists at that time to initiate an arrest.

VICTIM ASSISTANT

Officers shall also inform victims of local services for their shelter, protection, and welfare, and arrange for, or provide, transportation to that location when necessary.

**GENERAL ORDER 25-92  
FINGERPRINTING AND PHOTOGRAPHING**

**I. PURPOSE**

The purpose of this order is to establish procedures for photographing victims of crimes and the fingerprinting of incarcerated subjects..

**II. PROCEDURES**

**A. PHOTOGRAPHING**

1. Commander of the Bureau of Identification is to train designated police officers in the use of the 35mm self focusing cameras.

2. Two (2) 35mm self focusing cameras shall be maintained in a specified location at the front desk. When a camera is needed, a sign-in/sign-out sheet will be maintained at the Front Desk for check out purposes.

3. In the event of situations where on scene crime photos are required, i.e., bad knifings, shooting, serious Personal Injury Accidents (when the victim may expire in the hospital), squad car accidents, it shall be the responsibility of the Turn Sergeant to take pictures of the mentioned incidents.

4. In the event one of the two cameras malfunctions, the reserved 3rd camera will be maintained for that purpose.

5. The Hit and Run Officer shall be responsible for taking the pictures of all vehicle accident fatalities. In the event that the Hit and Run Officer cannot be contacted, i.e., vacation/sickness, etc., it shall be the responsibility of the Turn Sergeant to take pictures of the fatality incidents.

**B. HOMICIDE INVESTIGATION**

The assigned investigating Detective shall be responsible for taking photographs when dispatched to homicide scenes and crimes against person offenses.

117

PAGE 2/GENERAL ORDER 25-92  
FINGERPRINTING AND PHOTOGRAPHING

C. Fingerprinting - processing and loading of the mug shot camera.

1. Correctional Officers will be trained and will fingerprint and photograph prisoners.
2. Correctional Officers will be trained to process mug shots and fingerprints at the time the subject is arrested and incarcerated.
3. Bureau of Identification Commander shall also be responsible for training the Desk Personnel on proper fingerprinting procedures and their training (on station) in the proper utilization of the mug shot camera.
4. It shall be the responsibility of the B of I personnel to load and process films in the mug shot camera.

D. LOCATION

The third floor North male section will be the designated area where the photos and printing will be done.

1. It will be the responsibility of the other Division within the Police Department i.e., Auto Detail, Juvenile and P.M.B. to take the necessary pictures they deem necessary for their investigations.
2. After crime scene pictures are taken. It will be the responsibility of the respective divisions to take the film from the camera and give it to the B of I personnel for developing.



**GENERAL ORDER 26-92  
CONFISCATED MOTOR VEHICLES**

**I. PURPOSE**

Establishes guidelines for processing confiscated motor vehicles.

**II. POLICY**

Department personnel shall process all confiscated vehicles in accordance with IC 34-4-30.1. Vehicle means a device for transportation by land, water, or air; and includes mobile equipment with provisions for transport of an operator. (IC 34-41-1-2)

**III. PROCEDURE**

To qualify under IC 34-4-30.1, the vehicle must be used in or intended for use in the transportation of (1) controlled substance for purpose of sale, receipt, delivery or dealing, (2) stolen or converted property with a value greater than one hundred dollars (\$100.00). This statute also includes the following provisions:

1. Showing by the state must be by a preponderance of the evidence.
2. The seizure can be prior to an arrest if by court order.
3. The seizure can be incident to a lawful arrest or search, without a court order.
4. The statute does not provide for reimbursement to the seizing agency for towing or storage costs. Seized vehicles that the arresting officer believes to be of the type and condition that would be of value to the Department should be taken to the Motor Transport Division/Police Garage. If the vehicle has a lien or is not of suitable quality, it should be removed to a reputable storage garage. Either situation will require that all copies of the Gary Police Department's Tow-In Report be completed and a copy attached to the original criminal case.
5. The Commander of the Bureau of Investigative Services shall be notified as soon as possible of any vehicle that has been seized and the arresting officer believes to be of value for Department use. The Bureau of Investigative Services Commander shall cause the vehicle to be examined by

119



PAGE 2/GENERAL ORDER 26-92  
CONFISCATED MOTOR VEHICLES

a Motor Transport Division mechanic and will determine if forfeiture proceedings will be requested.

5. If the Department wishes to utilize the vehicle, the Lake County Prosecutor must bring forfeiture proceedings within ninety (90) days from day of seizure. Impounding officer shall notify the Prosecutor of the following; make, model, vehicle identification number, registered owner, lien holder, operator, passenger(s), reason for seizure, and approximate value of the vehicle.

7. Notice of forfeiture proceedings must be served on all parties of interest, and they have twenty (20) days in which to answer.

8. Court will hold hearings to determine if the vehicle forfeiture is to be ordered. If forfeited, the court will order the Bureau of Motor Vehicles to transfer clear title of said vehicle from defendant to seizing agency.

9. When the Bureau of Investigative Services receives a court ordered forfeiture, the order will be sent to the Commander of the Bureau of Investigative Services who will be responsible for processing the order through the Motor Transport Division to obtain the title and commission the vehicle.

10. If the Department is not going to use the vehicle, the commander of the Motor Transport Division shall cause the vehicle to be titled and delivered to the Sheriff of Lake County, who shall then sell the vehicle at public auction, and the money, less expenses, shall be placed in the State Common School Fund.

11. If the vehicle is to be used in the Gary Police Department's fleet, it will be delivered to the Motor Pool - Motor Transport Division. The Department will have use of the vehicle for one (1) year from date of forfeiture order. At the end of one (1) year, the Commander of the Motor Transport Division shall cause the vehicle to be titled and delivered to the Sheriff of Lake County who shall then sell the vehicle at public auction.

PAGE 3/GENERAL ORDER 26-92  
CONFISCATED MOTOR VEHICLES

12. The Commander of the Bureau of Investigative Services shall be responsible for the assignment and use of all forfeited vehicles under Department control. Seized vehicles shall not be utilized in any manner by Department personnel until all legal proceedings have been completed and the vehicle has been commissioned.

13. This procedure will be used in conjunction with Department Regulations and all relevant Policies and Procedures.

**GENERAL ORDER 27-92  
RIDING IN SQUAD CARS**

At no time shall any member of this department call communications and request transportation, from sector marked units, to and from the station or any other location unless authorization has been granted by a commanding officer of the division in which the requesting member of this department is assigned.

**GENERAL ORDER 28-92**  
**MOTOR TRANSPORT DIVISION**

1. This division will be attached to the Bureau of Uniform Services.
2. A member of the force shall be designated as Commanding Officer and he will be responsible for the administration, supervision, discipline and control of all members of the force and civilian employees assigned to the Motor Transport Division.
3. The Commanding Officer of the Motor Transport Division will report to the Commander of the Bureau of Uniform Services on all matters affecting his Division.
4. The Motor Transport Division shall hereafter:
  - a. Absorb all functions presently conducted by the staff of the Police Garage.
  - b. Assume responsibility for and supervision of:
    1. All automotive equipment including; but not limited to, automobiles; trucks; wagons; cycles; scooters; etc.
    2. Spare parts including but not limited to tires, accessories, etc.
    3. All shop equipment including tools.
    4. Gas, oil and lubrication facilities and distribution.
    5. All records requisitions for vehicles, supplies and equipment.
    6. Monitoring the Motor Transport Division's budget and such other duties as prescribed by the Chief of Police.



**GENERAL ORDER 28.1-92**  
**MOTOR TRANSPORT'S RULES AND REGULATIONS**

1. All civilian employees are expected to punch the time clock when beginning or ending their tour of duty. Termination will be requested for anyone punching the card of another employee.
2. Any employee leaving the Police Garage must report to Supervisor and/or Shop Foreman for permission.
3. An employee must punch time clock when leaving Police Garage, and returning, when not applicable to police business.
4. All employees will sign attendance sheets on a daily basis. It will be forbidden to sign these sheets in advance.
5. Supervisors and/or Shop Foreman will be responsible for knowing the whereabouts of personnel under their command.
6. Supervisors and/or Shop Foreman will be responsible for assuring that personnel are working at all times.
7. Authorization shall be obtained from the Supervisor before any Vehicle will be taken off the premises for road testing.
8. Under no circumstances will a civilian employee take a police vehicle out of the Motor Transport compound for personal use, i.e. errands, food pick up, etc.
9. Periodic but no less than weekly tool box checks will be instituted by the Supervisor and/or Shop Foreman.
10. Any tools or shop equipment belonging to the City of Gary (Police Garage) is not to be taken off the premises.
11. All employees will be required to finish job on vehicle started, or be able to explain to supervisor reasons why not. When a job is incomplete due to time element, mechanic must advise Supervisor and/or Shop Foreman what has been done, and what still needs to be done to complete repairs.
12. The parts room will be kept locked at all times. Supervisors and Shop Foreman will have possession of the key, and will be held accountable for distribution of any an all parts.

PAGE 2/GENERAL ORDER 28.1-92  
MOTOR TRANSPORT'S RULES AND REGULATIONS

13. The Police Garage Tow Truck is not to be put into use between the hours of 1:00 a.m. and 7:00 a.m., unless there is an emergency situation, and then must be authorized by the Supervisor or Division Commander.
14. Gasoline pumps, when not manned, are to be kept in the off position, and will be kept in this position at all times between the hours of 1:00 a.m. and 7:00 a.m.
15. Mechanics will be responsible for the distribution of gasoline when attendant is not working.
16. Motor pool technicians are to be held responsible for maintaining gasoline sheets as far as tallies, etc. Supervisors will see that these sheets accurately account for the amount of gasoline dispersed.
17. Private cars will be forbidden in the police garage.
18. There will be absolutely no working on private and/or personal vehicles either during working hours, or off duty in the police garage.
19. Priority will be given to working police officers who come to the garage with a vehicle in need of repair. Other duties shall temporarily cease, and every effort shall be made to return these officers to their tour of duty.
20. It shall be the responsibility of the Supervisor to see that no civilians or unauthorized employees are permitted inside the police garage.
21. Personnel are not to socialize in the Supervisor's Office, and should not enter unless their duties necessitate being there.
22. Personal telephone calls will be kept to a minimum, and then will be limited to three (3) minutes.
23. Employees of the police garage are entitled to a one hour lunch period. However, lunch will be taken between the hours of 11:00 a.m. and 1:00 p.m., unless permission is granted by the supervisor to do otherwise and this will not be done on a permanent basis.

123

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**PAGE 3/GENERAL ORDER 28.1-92**  
**MOTOR TRANSPORTATION DUTIES AND RESPONSIBILITIES**

24. Employees will not be permitted to leave the Motor Pool Compound for their lunch period, and then return and eat on premises after the designated hour.
25. Due days will be considered only when requested in writing, and no later than 48 hours in advance, with the explanation on why they are entitled. The shift Supervisor will then have the authority to approve or deny based on the available manpower for the time requested.
26. Employees reporting off because of illness notify the Supervisor's Office at least one (1) hour prior to scheduled shift time. Information shall also be given as to the nature of illness, and the estimated time of return to duty.
27. Any employee off three (3) or more consecutive days because of illness will be expected to produce a doctor's slip upon his/her return to work.
28. It shall be the responsibility of the turn supervisor to see that records are kept on those employees that consistently report off for short periods of time. When sufficient documentation is accumulated, dismissal will be requested.
29. Each employee shall see that the Supervisor's Office has an accurate address and telephone number where he can be reached. Changes shall be reported to this office within 48 hours after being made.
30. All employees, where applicable, must maintain a valid Indiana Driver's license.
31. Any employee discovering theft of property are to submit a written report to the supervisor for follow-up. A decision will then be made concerning the need for further action, i.e. criminal reports, internal investigation, etc.
32. All inquiries reference to the activities of the Motor Transport Division are to be directed to the Division Commander, or Chief's Office for response.
33. Supervisors are responsible for assuring that someone is performing necessary duties during shift changes, or until properly relieved.

**PAGE 4/GENERAL ORDER 28.1-92**  
**MOTOR TRANSPORTATION DUTIES AND RESPONSIBILITIES**

34. Turn Supervisors shall see that terminated or suspended employees turn in all city property i.e. keys, uniforms, identification cards, etc.

In regards to sworn police personnel assigned to the Motor Transport Division, these orders are not intended to supersede or relieve the employee from complying with any previous orders set down by the Office of the Chief of Police.



**GENERAL ORDER 29-92  
POLICE DEPARTMENTAL RECOGNITION**

A Board has been officially created for Policeman of the Month Award.

Award selection shall be of three (3) categories:

1. Most Outstanding Arrest
2. Outstanding Follow-up Investigation
3. Policeman of the Month Service and Performance Award

Recommended candidates for selection may be nominated by Commanders, Supervisors, Fellow-Officers or citizens from the community.

It is hoped that civil service credit will be granted for each award of 1/4 credit and a full one (1) point credit for POLICE OFFICER OF THE YEAR.

The Department Board shall consist of the following members:

Deputy Inspector - Bureau of Supportive Services (Chairman)  
(2) Police Officers  
(1) Traffic Officer  
(2) Officers from Investigations  
(1) Officer from Technical Services  
(1) Public Relations Officer

The officers will be selected on monthly rotations to serve on the Board. Board members will meet on the 2nd Wednesday of each month.

Nominees can also be selected from mail correspondence received commending police officers for their professionalism, job performance, etc.

Service Awards implemented to honor those officers who have performed their duties in a courteous, helpful manner, and those who normally serve in an administrative capacity and might not otherwise be considered for other categories.

PAGE 2/GENERAL ORDER 29-92  
POLICE DEPARTMENTAL RECOGNITION

It should also be noted that nominees for most outstanding arrest should not be limited to the Uniform Services Division, nor should outstanding follow-up investigations be limited to those officers assigned to an Investigative Division. All officers are eligible for nomination in all categories. Arrest and investigations conducted while off duty may also be considered.

Commanders, Supervisors, Fellow officers should include in their recommendation, copies of arrest reports, case numbers, etc.

**GENERAL ORDER 30-92**  
**REGULATIONS FOR UNIFORM DRESS FOR SWORN PERSONNEL**

**I. PURPOSE**

This order establishes the regulation for uniforms for sworn personnel.

**II. OFFICIAL UNIFORM AND EQUIPMENT**

- A. When assigned to uniform duty, the official dress for male and female officers will consist of a neat, clean and well pressed uniform, fully loaded official Gary Police pistol, with at least one (1) extra fully loaded magazine, identification card, official badge and shield, nameplate, handcuff key, leather set, baton, citation books (parking and traffic), watch, flashlight, notebook, and ball point pen.
- B. While riding or driving in a departmental squad car, the cap may be removed but, when the officer emerges from the squad car he or she will immediately put on his or her cap.
- C. In an announced emergency, off-duty sworn members will report in regulation uniform to the police station unless otherwise directed.

**III. UNIFORM AND EQUIPMENT SPECIFICATIONS**

**A. Winter Uniforms**

**1. Patrolman and Corporals**

a. Cap is to be French blue in color with a patent leather visor and black patent leather or plastic band encircling the front half of the cap with the ends secured with silver P buttons. The cap shield will be worn in the space provided. The winter fur hat may be worn in the winter season,

b. Field jacket with silver buttons. The spring and fall windbreaker also may be worn.



PAGE 2/GENERAL ORDER 30-92  
UNIFORM REGULATION

c. Trousers will be French blue in color and have a 3/4" navy blue stripe sewn over the outside leg seam from the waist to the bottom.

d. Shirt shall be long sleeve navy blue permanent press with silver buttons with a French blue clip on tie.

e. The uniform sweater is an optional wear.

1. The uniform sweater can only be worn with the winter uniform.

2. The uniform sweater must be a pull over type, navy blue in color, with ridges, long sleeves and a V or Crew neck.

3. The time period to wear the uniform sweater shall commence and cease when designated by the Commanding Officer of the Bureau of Uniform Services.

2. Sergeants and above

a. Cap is to be French blue in color with a black patent leather visor and gold band (as approved for each rank) encircling the front half of the cap with the ends secured with gold P buttons. The cap shield will be worn in the space provided. The winter fur hat may be worn in the winter season.

b. Field jacket with gold buttons, the spring and fall windbreaker also may be worn.

c. Trousers will be French blue and have a 3/4" navy blue stripe sewn over the outside leg seam from the waist to the bottom.

d. Shirts for sergeant shall be long sleeve navy blue permanent press with gold buttons with a French blue clip on tie. Shirts for Lieutenants and above shall be long sleeve white permanent press with gold buttons and a dark blue clip on tie.



PAGE 3/GENERAL ORDER 30-92  
UNIFORM REGULATIONS

B. Summer Uniform

1. Patrolman and Corporals

a. Cap is to be French blue in color with a patent leather visor and black patent leather or plastic band encircling the front half of the cap with the end secured with silver P buttons. Corporals shall wear silver hat bands. The cap shield will be worn in the space provided.

b. Field jacket with silver buttons, the spring and fall windbreaker also may be worn.

c. Trousers will be French blue and have a 3/4" navy blue strip sewn over the outside leg seam from the waist to the bottom.

d. Shirt shall be short sleeve navy blue permanent press with silver buttons.

e. All officers may wear the optional baseball style cap as part of the summer working uniform. This cap shall be dark blue with a special Gary Police Department insignia patch on front.

2. Sergeants and above

a. Cap is to be French blue in color with a black patent leather visor and gold band (as provided for each rank) encircling the front half of the cap secured with gold P buttons. The cap shield to be worn in the space provided.

b. Field jackets with gold buttons, and the spring and fall windbreaker may also be worn.

c. Trousers will be French blue with 3/4" navy blue stripes sewn over the outside leg seam from the waist to the bottom.

d. Shirt for sergeants shall be navy blue short sleeve permanent press with gold buttons. Shirts for Lieutenants and above shall be short sleeve white permanent press with gold buttons.

e. Tee shirts may be worn but, only white tee shirts may be worn with the summer uniform.

PAGE 4/GENERAL ORDER 30-92  
UNIFORM REGULATIONS

C. UNIFORM LEATHER GOODS

1. All items of leather equipment carried by sworn uniform officers are to be black in color and can be plain or basketweave in design.
2. The equipment belt (gun belt) will carry holster with a snap down strap, baton holder, cartridge case, handcuff case, and a walkie-talkie holder.
3. Shoes and boots
  - a. The dress shoe is to be clorino with a plain toe, black in color. The dress shoe may be worn year round.
  - b. The walking (athletic) shoe is the Rocky #2050 or #180 that has a leather upper and a non-skid sole the shoe is black in color. This shoe may be worn ONLY with the summer uniform.
  - c. The boot is the Rocky #8032 or #4044 that has a leather cordura upper, Gore-Tex bootie, thinsulate lining, and lug sole, black in color. This boot may be worn ONLY with the winter uniform.
  - d. Shoes and Boots are to be kept clean and shined.

D. UNIFORM ACCESSORIES for all ranks are to be black in color without ornamentation.

1. Raincoat (clear plastic optional)
2. Rain cap cover (clear plastic)
3. Ear covering (leather, wool or cotton) to be worn with winter uniform ONLY.
4. Mufflers and scarves (wool or cotton) to be worn with winter uniform ONLY.
5. Gloves (leather, wool or cotton)
6. Sweater of material suitable for climatic conditions (may be navy blue).
7. Overshoes (zipper, slip-on, or buckle type)
8. Windbreaker, spring-fall type (may be navy blue)
9. Socks (may be navy blue)



PAGE 5/GENERAL ORDER 30-92  
UNIFORM REGULATIONS

E. WEATHER EXCEPTIONS for all sworn uniform personnel

1. Whenever the weather becomes unseasonably warm and winter uniforms are in effect the long sleeve shirt may be worn as the outer garment.
2. When the short sleeve shirt is the authorized outer garment and the weather becomes unseasonable cool, the field jacket or windbreaker may be worn.

IV. PLACEMENT OF INSIGNIA OF RANK, BADGE AND DEPARTMENT PATCH

A. All officers, lieutenants, and above when wearing a uniform blouse, jacket, overcoat, or alternate raincoat, will wear insignia of rank on the shoulder straps. The collar insignia of rank will be worn only on shirts. See diagrams #4 and #5.

B. Sergeants will wear the regulation (3) three chevrons (gold in color) on all shirts, coats and jackets (except the raincoat). The chevrons will be sewn on both sleeves. The color insignia of rank will be worn only on shirts. See diagram #3, #6, #7 and #8.

C. Corporals will wear the regulation (2) two chevrons (royal blue in color) on all coats, shirts, and jackets (except the raincoat). The chevrons will be sewn on both sleeves. The color insignia of rank will be worn only on shirts. See diagrams #2, #6, #7, and #8.

D. Patrolman will wear collar insignia "GPD" only on shirts. See diagram #1.

E. All uniform officers regardless of rank will wear their badge on their outer garment in the holder provided on the garments, over the left breast.

F. The departmental patch will be worn on all shirts and jackets (except the raincoat). See diagram #9.

G. The name plate shall be the same color as the badge and will be worn on the left side of shirt and the right side on jacket.

PAGE 6/GENERAL ORDER 30-92  
UNIFORM REGULATIONS

V. ALL SWORN OFFICERS ARE PROHIBITED FROM WEARING THE FOLLOWING ITEMS.

A. Faded, frayed, torn, or ragged uniform shirts, trousers, department patches, chevrons, braids, ties, jackets, coats or caps.

B. Any identifiable items of the uniform while in civilian dress except the official badge, revolver and I.D. tag.

C. Wearing of the GARY POLICE UNIFORM while on suspension.

D. Wearing suspenders exposed to view.

E. Wearing earrings of any kind.

F. Wearing more than one ring per hand.

G. Wearing chains, necklaces, dogtags in plain view.

H. Faded, cracked, or torn pistol belt or pistol belt accessories.

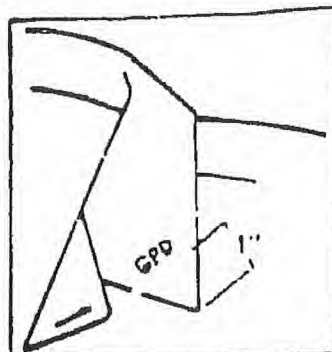
I. The length of the uniform trousers shall not extend below the top of the uniform shoes.

J. No civilian clothing are to be worn with the official police uniform while on duty, off duty or while working a second job.



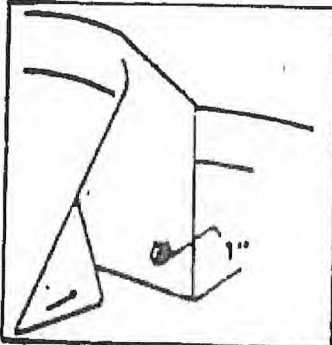
PAGE 7/GENERAL ORDER 30-92  
UNIFORM REGULATIONS

DIAGRAM #1



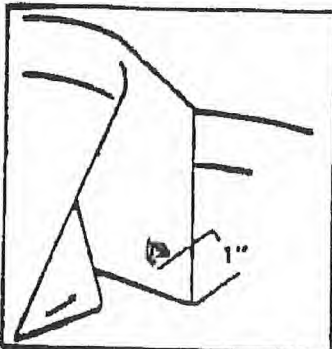
Patrolmen shall display "GPD" insignia on both shirt collars. The insignia will be clutch back type Rhodium plated.

DIAGRAM #2



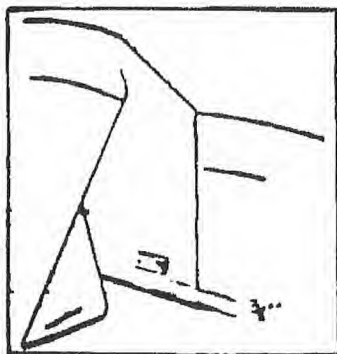
Corporals shall display the openstrip chevron (3/4 inch wide) on both shirt collars. The insignia will be clutch back type with Rhodium plating.

DIAGRAM #3



Sergeants shall display the openstrip chevron (3/4 inch wide) on both shirt collars. The insignia will be clutch back type, gold in color.

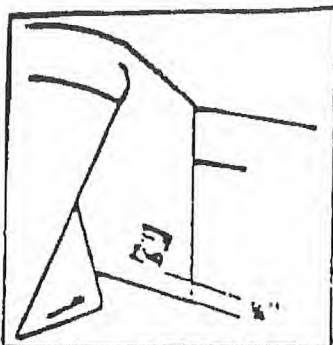
DIAGRAM #4



Lieutenant shall display gold lieutenants bar (3/4 inch long) on both shirt collars. Bars will be clutch back style.

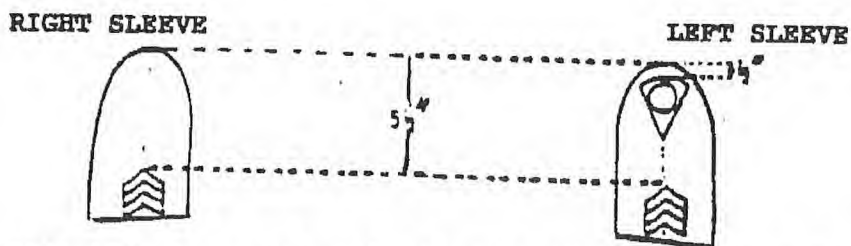
PAGE 8/GENERAL ORDER 30-92  
UNIFORM REGULATIONS

DIAGRAM #5



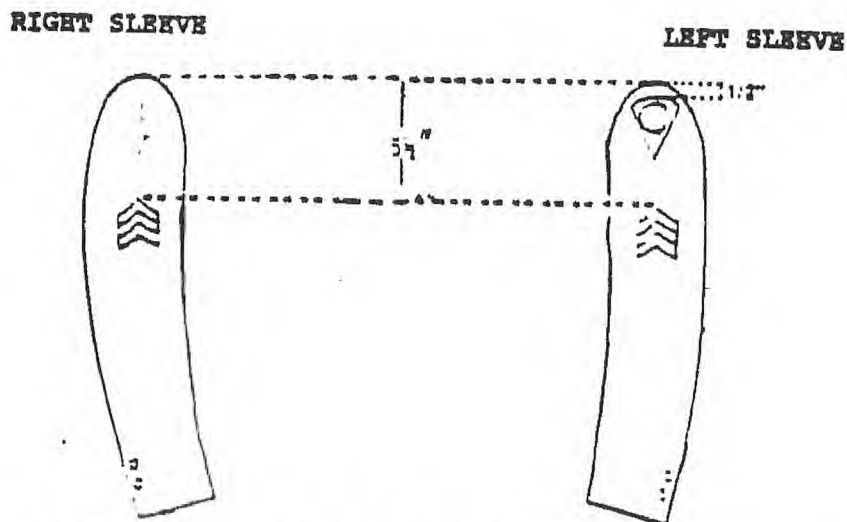
Captains shall display gold double bars (3/4) inch long) on both shirt collars. Bars will be clutch back style.

DIAGRAM #6



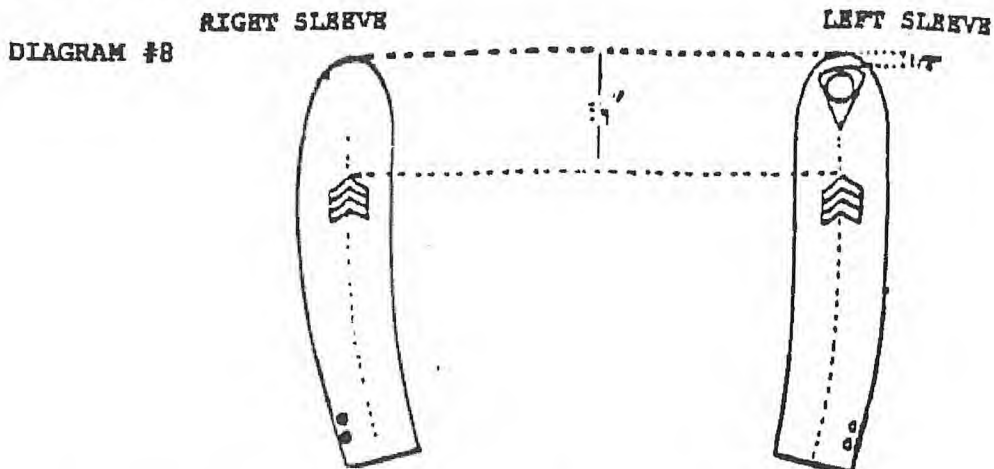
Corporals and Sergeants will display sewn-on chevrons in the appropriate place on both sleeve of their short sleeve shirts.

DIAGRAM #7

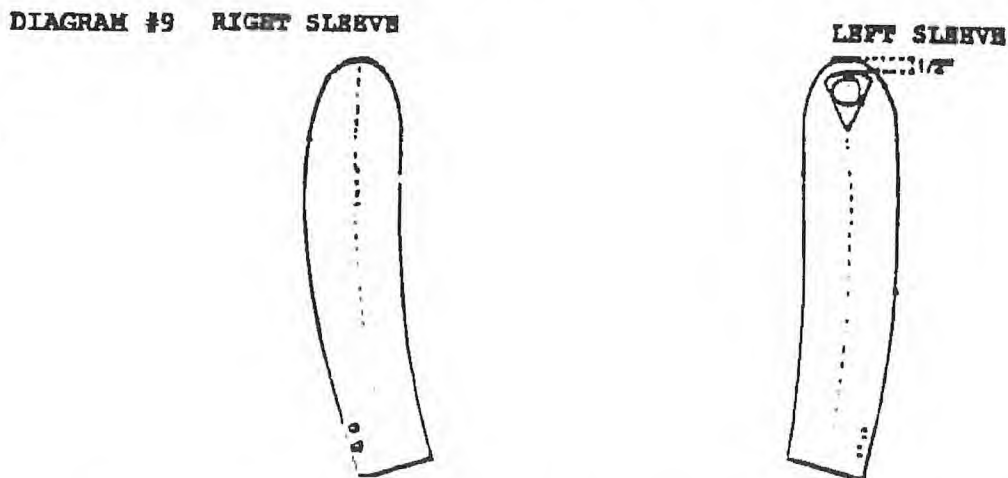


Corporals and Sergeants will display sewn-on chevrons in the appropriate place on both sleeves of their long sleeve shirts.

PAGE 9/GENERAL ORDER 30-92  
UNIFORM REGULATIONS



Corporals and Sergeants will display sewn-on chevrons in the appropriate place on both sleeves of their outer garment, such as the windbreaker and the car duty coat. Superior officers of the rank of Lieutenant and above shall display the appropriate rank on the shoulders of the outer garment.



The Department Patch is to be worn on all uniform shirts, jackets and coats except the rain coat. The patch is to be worn on the left sleeve only.



GENERAL ORDER 30.1-92  
DRESS CODE - GROOMING

I. PURPOSE

This order shall define, establish, and illustrate the standard of grooming for all sworn members of the department.

II. POLICY

As long as an officer's appearance is kept in a neat manner, the acceptability of an officer's personal grooming shall be based upon the criteria in this order.

III. STANDARDS

A. MALE

1. HAIR

- a. Hair shall be neatly groomed and clean
- b. The length and/or bulk of the hair shall not be excessive or present a ragged or unkept appearance, with or without the uniform cap. Hair shall not exceed one and one-quarter (1 1/4) inches in bulk, regardless of length, e.g., afro, natural styling, or permanent waved styling.
- c. The hair on the sides and back of the head shall present a tapered or blocked appearance and shall not touch the shirt or coat collar except for the closely cut hair at the nape of the neck. Hair shall not extend over the top of the ear but shall be tapered around the ear or blended naturally behind the ear and into the hair at the back of the head at all times while in uniform.
- d. Hair in front shall be groomed so that it does not fall below the band of properly worn headgear.
- e. Wigs or hair pieces, are permissible, however, the wig or hair piece shall conform to the standard haircut and grooming guidelines.



PAGE 2/GENERAL ORDER 30.1-92  
DRESS CODE - GROOMING

2. SIDEBURNS

- a. Shall be neatly trimmed with the base clean shaven in a horizontal line.
- b. Shall not extend downward below the earlobe.
- c. Shall be trimmed so that hair does not extend beyond the natural outline of the sideburn.
- d. Shall not be bulky, but shall be trimmed and tapered in the same manner as the haircut.
- e. Muttonchops or styles of the same nature shall not be permitted.

3. MUSTACHE

- a. Shall be neatly trimmed.
- b. Shall not extend over the upper lip or beyond one-quarter (1/4) inch below the sides/corner of the mouth.
- c. Shall not be bulky in appearance.
- d. No other styles are permitted, i.e., handlebars, etc.

4. BEARDS

Beards, chin whiskers, and/or hair below the bottom lip are not permitted unless the officer is assigned in an undercover investigative capacity in the Investigation Division. The wearing of a beard is at the discretion of the Chief of Police.

5. See Page #5

PAGE 3/GENERAL ORDER 30.1-92  
DRESS CODE - GROOMING

B. FEMALE

1. HAIR

- a. Shall be neatly groomed and clean.
- b. Shall be neatly shaped and arranged in an attractive style.
- c. While in uniform, hair may touch the collar but shall not fall below the lower edge of the collar.
- d. Conspicuous ribbons, scarves, pins, combs, and barrettes shall not be worn in the hair while in uniform.
- e. Hair coloring or lightening used shall harmonized or complement the skin coloring. Colors shall not be harsh and shall be natural looking.
- f. Wigs, if worn, shall look natural and shall conform to all of the above listed regulations.
- g. Hair shall not exceed one and one quarter (1 1/4) inches in bulk, regardless of length, e.g., natural styling, permanent waving, bouffant styling, etc. Cornrowing and pigtails are not permitted.

2. COSMETICS

- a. Cosmetics shall be worn that harmonize with and enhance the natural coloring of the skin.
- b. Makeup is applied for the purpose of improving the appearance and shall not be worn in a "heavy-handed" or conspicuous manner.
- c. Makeup shall be worn in a light and natural manner and shall not look artificial.
- d. Perfume shall not be "heavily" scented, and shall be used sparingly.

PAGE 4/GENERAL ORDER 30.1-92  
DRESS CODE - GROOMING

3. See page 6

C. EXCEPTIONS

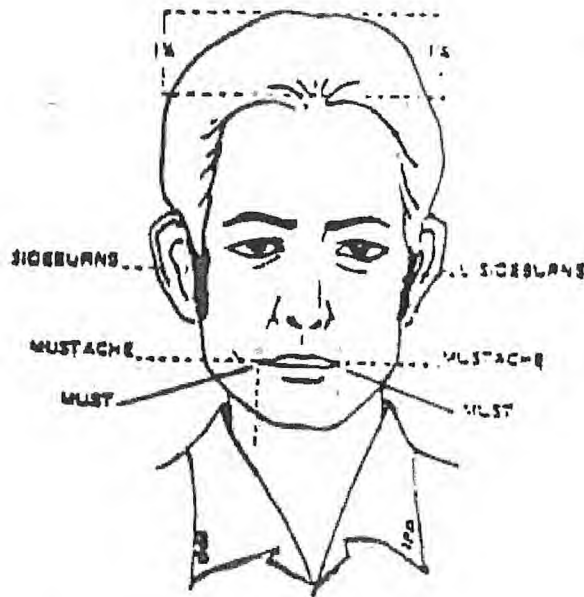
Divisional Commanders may permit officers under their command to wear their hair, sideburns, and beards in any manner so long as the officers are engaged in a type of investigative assignment whereby other styling might hamper the effectiveness of the officers. However, any officer not engaged predominately in an undercover position, but in plain clothes (Detective, Administrative Personnel, etc.) shall follow the above outlined procedures. Also, any officer normally engaged in an investigative assignment but detailed to a uniform patrol for any special reason shall conform to the above outlined procedure. This order applies whenever the official Gary Police Department Uniform is worn in connection with outside employment and/or when the uniform is worn while off duty.

D. Fingernails (all fingernails) will be kept short and neatly trimmed. Only clear fingernail polish may be used, colored polish will not be worn.



PAGE 5/GENERAL ORDER 30.1-92  
DRESS CODE - GROOMING

MALE PERSONAL GROOMING  
STANDARDS



A. HAIR MUST:

1. Be clean.
2. Be tapered side and back and conform generally to the shape of the skull.
3. Be arranged in an orderly manner.

MUST NOT:

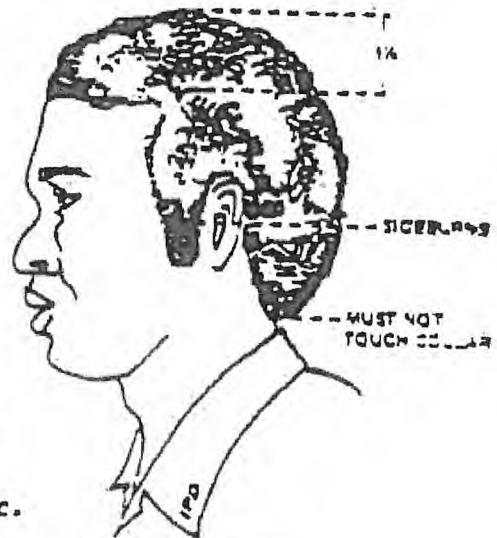
1. Be worn in the following styles: braids, ducktail, pageboy, flip, mohawk, or bulky hair styles.
2. Exceed 1/4 inches in bulk regardless of length.

B. SIDEBURNS MUST:

Be neatly trimmed and tapered in same manner as haircut.

MUST NOT:

Extend downward below the earlobe



C. MUSTACHE  
MUST NOT:

Extend over the upper lip or beyond one quarter (1/4) inch below the sides/corner of the mouth.



PAGE 6/GENERAL ORDER 30.1-92  
DRESS CODE - GROOMING

FEMALE PERSONAL GROOMING  
STANDARDS



NOT EXTEND BELOW  
COLLAR'S LOWER EDGE



HAIR MUST;

1. Be Clean.
2. Neatly arranged in an attractive style.

MUST NOT:

1. Be worn in following styles; pigtails, braids, cornrowing or bulky hair styles.
2. Exceed 1 1/4 inches in bulk regardless of length.
3. Conspicuous ribbons, scarves, etc. shall not be worn.



NOT EXTEND BELOW  
COLLAR'S LOWER EDGE

GENERAL ORDER 30.2-92  
DRESS CODE - PLAIN CLOTHES

I. PURPOSE

This order shall establish the dress code for members of the Department.

II. POLICY

A. Court or any Review Board appearance

1. Male officers shall be well-groomed and wear:
  - a. Uniform or
  - b. Shirt and tie, or
  - c. Suit and tie.
2. Female officers shall be well-groomed and wear:
  - a. Uniform, or
  - b. Skirt and blouse, or
  - c. Dress, or ladies suit

B. Detective/Administrative Personnel

1. Male officers, while on duty and in civilian clothing, shall be well-groomed and wear:
  - a. Shirt and tie, or
  - b. Suit and tie.

PAGE 2/GENERAL ORDER 30.2-92  
DRESS CODE - PLAIN CLOTHES

2. Female officers, while on duty and in civilian clothing, shall be well-groomed and wear;
  - a. Skirt and blouse, or
  - b. Dress, or
  - c. Suit.

C. PROHIBITED

1. No member of the Department shall report for duty, court, or any Review Board Hearing in leisure suits, jeans, or any suit made out of denim material.

D. EXCEPTIONS

1. Those officers assigned to units having altered dress codes as established by the Chief of Police (i.e., undercover detail).

**GENERAL ORDER 31-92  
ESTABLISHMENT OF THE BUREAU OF UNIFORM SERVICES**

A Bureau of Uniform Services will be established in this Department.

A commanding officer will be designated and he shall be responsible for the government, discipline, administration, and disposition of the following commands:

1. Patrol Division
2. Tactical/Traffic Division
3. Aviation Unit
4. Marine Patrol Unit
5. Auxiliary Police Section

The commanding officer of the Bureau of Uniform Services shall recommend transfers of personnel, allocations of space and equipment and similar management affairs and shall exercise control of all records, clerical procedures and reports on a regular basis for Divisions under his command.

An Administrative Assistant will be assigned to the Office of the Bureau of Uniform Services to provide day to day administrative continuity for the affairs of the Bureau and shall keep the commanding officer apprised at all times of important matters and emergency situations.

The proper channels of communications, except in emergencies, shall be from subordinate command to the Bureau of Uniform Services and then to the Deputy Chief of Police.



**GENERAL ORDER 31.1-92  
DUTIES/SUPERVISOR PATROL  
BUREAU OF UNIFORM SERVICES**

A position of Supervisor of Patrol has been created within the Bureau of Uniform Services. Superior Officers when available will be assigned for this purpose.

1. Insure proper performance of functions designated for each division bureau, squad, unit and other branches of the department.
2. Insure the efficiency and discipline of personnel of all branches of the Bureau of Uniform Services.
3. Check on the serviceability, proper care and use of department buildings, records and equipment utilized by the Bureau of Uniform Services.
4. Instruct and frequently test the knowledge of members of all commands of the Bureau of Uniform Services in their duties and responsibilities.
5. Make frequent personal inspections of the uniforms, equipment and general appearance of all members assigned to the Bureau of Uniform Services.
6. Frequently examine all books and records of the Bureau of Uniform Services at unscheduled intervals.
7. Investigate reports of neglect of duty coming to his attention.
8. Supervise uniform patrol personnel at irregular intervals in the field and in department buildings.
9. Utilize resources of the department to cope efficiently with the existing problems which arise unexpectedly while on duty.
10. Perform duty in uniform or plainclothes as the exigencies of the services require and approved by the Commanding Officer of the Bureau of Uniform Services.
11. Supervise the activities of the Auxiliary Police Unit while they are performing duty with and for the department.

PAGE 2/GENERAL ORDER 31.1-92  
DUTIES/SUPERVISOR PATROL  
BUREAU OF UNIFORM SERVICES

12. Assume command and perform functions of any Commanding Officer as required during his absence as directed.
13. Conduct investigations as directed by the Commanding Officer of the Bureau of Uniform Services
14. Represent the Commanding Officer of the Bureau of Uniform Services at community meetings or other public assemblies as directed.
15. Perform tours of duty as directed by the Commanding Officer of the Bureau of Uniform Services.
16. Notify unit commanders of hazards not readily corrected by on-duty personnel.
17. Redeploy personnel if necessary on a temporary basis to cope with emergency situations.
18. Respond to and direct police activities at serious crimes and emergencies until the arrival of a higher ranking superior officer.
19. Insure that official reports are accurate and complete.
20. Advise the Commanding Officer of the Bureau of Uniform Services of matters of importance, unusual arrests or occurrences and important messages or conditions requiring immediate attention.
21. Evaluate continuously the effectiveness of all assignments within the organizational structure of the Bureau of Uniform Services.
22. Make disciplinary reports concerning members of the force and civilian employees of the department as required.
23. Investigate and report on injuries to members of the department and damage to the department property as required.
24. Visit courts to supervise performance and conduct of members of the force.

PAGE 3/GENERAL ORDER 31.1-92  
DUTIES/SUPERVISOR PATROL  
BUREAU OF UNIFORM SERVICES

25. Inform local businessmen of department policy concerning corruption and gratuities.
26. Maintain rapport with members of the force and others to seek symptoms of corruption and inefficiency.
27. Perform such other duties as required by the position of the Supervisor of Patrol or as directed by the Commanding Officer of the Bureau of Uniform Services or higher ranking superior officers.



**GENERAL ORDER 31.2-92  
DEPLOYMENT OF PERSONNEL**

**I. INTRODUCTION**

Investigative and Technical Service Bureau Commanders, other Division Commanders and the Chief's Office shall submit a monthly work schedule of all sworn personnel, (Lieutenants and below) to the Commander of the Uniform Service Bureau for the purpose of being scheduled to work in the Patrol Division.

Each Lieutenant, Division Commander and others working a 5-2 schedule will work one (1) day a week in the Patrol Division.

Officers working 4-2 schedule will work one (1) day per four (4) day work period.

The schedule submitted shall specify what day of the week the personnel will be working in the Patrol Division.

**II. DEPLOYMENT OF PERSONNEL**

All Lieutenants will be assigned to a Patrol Shift as a Acting Watch Commander or shift Commander where needed by the Commander of the Bureau of Uniform Services.

All Sergeants will be assigned as Sector Supervisors on the same shift they are assigned to work in their regular divisions.

All Corporals and below will work the same shift they are assigned to work in their regular divisions.

Whenever, an officer is scheduled to work in the Patrol Division and calls off from duty, the Watch Commander will submit a report to the Commander of the Bureau of Uniform Services the following morning.

The Bureau Commander will notify the officer's Bureau Commander.

Any officer who calls off from duty the day he/she is scheduled to work in the Patrol Division will work two (2) or more days in the Patrol Division the following work period.

Any officer who calls off from duty on his/her regular shift and have to be replaced by another officer will work two (2) or more days in the Patrol Division when scheduled.



PAGE 2/GENERAL ORDER 31.2-92  
DEPLOYMENT OF PERSONNEL

Whenever, an officer has to be reassigned to his/her regular duties because of an emergency and it is within the first three (3) hours of his/her patrol shift, he/she will make up the patrol day on his next day in the Patrol Division, in addition to working this regular scheduled day in the Patrol Division. Instead of working one (1) day in the Patrol Division, he/she will work two (2) consecutive days that week.

At all times there will be one (1) sworn personnel on each shift in the Communication Room and Front Desk.

III. EMERGENCY DEPLOYMENT OF PERSONNEL

All Investigative and Technical Service personnel while working in the Patrol Division may be utilized by the Watch or Acting Watch Commander to assist in any critical situation in their divisions.

The Watch or Acting Watch Commander when utilizing these individuals in these capacities will report in detail, all circumstances of the need to the Uniform Services Bureau Commander that day (day shift) or the following morning.

A. EXCEPTIONS:

1. All members of the Public Morals Division are exempt from this deployment procedure.

**GENERAL ORDER 31.3-92  
MARINE PATROL UNIT**

A Marine Patrol Unit has been established and will function as an operating arm of the Patrol Division.

The Commanding Officer, Patrol Division shall be responsible for the administration, supervision and control of this unit.

The Commanding Officer, Marine Patrol Unit, shall be seasonally selected from the total available force and shall be responsible for the discipline, assignment and training of the crew seasonally selected from the total available force. His duties shall consist of but are not limited to the following functions:

1. Maintenance of a ship's log which shall contain the following:
  - a. Information concerning all licenses required by law for the vessel and members of the crew.
  - b. A current property inventory which shall be checked weekly and notations made with results thereof.
  - c. Record of all activity undertaken concerning the vessel including dates and hours afloat on patrol and in berth, fuel taken on board, new equipment added, unusual incidents effecting the craft or crew members including a record of all visitors taken on board and the reason thereof, both official and unofficial.
  - d. All other activity concerning the craft or crew not mentioned heretofore including discipline.
  - e. Record of all assistance rendered bathers, boater or other authorities.
  - f. Liaison with other marine authorities both government and civilian.
  - g. Such other matters, not listed above but consistent with entries in a ship's log.
2. Storage, refurbishing and berthing of the craft specifying dates, time and particulars thereof.
3. Prepare daily activity reports for the Commanding Officer, Patrol Division.



**GENERAL ORDER 31.4-92  
AUXILIARY POLICE SECTION**

- I. An Auxiliary Police Section is hereby created and is assigned to the Bureau of Uniform Services for administration.
- II. The Commanding Officer of the Auxiliary Police Section shall coordinate activities of all members of the auxiliary police.
  - A. He shall be responsible for the recruitment of new members and the retention of present members.
  - B. He shall be responsible for the training of all auxiliary police.
  - C. He shall coordinate the activities of the auxiliary police with other branches of this department.
  - D. He shall be responsible for the issuance and return of department property used by auxiliary police including automobiles, radios, etc.
  - E. He shall be responsible for the control, supervision and discipline of all members of the auxiliary police.
  - F. He shall investigate all matters pertaining to members of the auxiliary police unless the Internal Affairs Division is assigned to a specific case.
  - G. He shall be responsible for the administration of department affairs concerning all members of the auxiliary police and shall act as liaison officer with all private and governmental agencies.
  - H. He shall be responsible for installing a record keeping system which will maintain a roster with basic personnel information on each member to assure adequate department records for administrative use as needed.
  - I. He shall be responsible for all the duties connected with the operation of the Auxiliary Police Section which are not specified in the foregoing sub-division.
- III. It is the intention of this department to use the service of qualified members of the community who volunteer for duty as auxiliary police in a manner consistent with safety, efficiency and common sense for the benefit of all members of the department and the citizens of the City of Gary.

PAGE 2/GENERAL ORDER 31.4-92  
AUXILIARY POLICE SECTION

- IV. Auxiliary Police Personnel are authorized to utilize marked radio motor patrol vehicles when they report to duty. A trip ticket is necessary and will be issued and signed by the Patrol Command, Executive Officer or Turn Commander if the Commanding Officer of the Auxiliary Police Section is not available. Assignments will also be made in this manner if the Commanding Officer - Auxiliary Police Section is not present.



**GENERAL ORDER 32-92  
PLAINCLOTHES OFFICER IDENTIFICATION**

**PURPOSE:**

Officers working in plainclothes shall be prompt to identify themselves when the necessary arises. At the scene of an emergency where it is desirable to display the badge continuously it shall be attached to an outer garment.

**GENERAL ORDER 33-92  
ESTABLISHMENT OF THE PUBLIC MORALS DIVISION**

The Public Morals Bureau office will be detached from the station. This office will be for administrative purposes only. All evidence and prisoners shall be processed only at the Police Headquarters building.

Narcotics evidence or other contraband seized or found by or given to any member of the Public Morals Bureau will be inventoried and sealed in department plastic bags and numbered serially with Public Morals Bureau Property Numbers in conjunction with the sequence established by the Department Property Clerk. The bag shall be sealed and signed by a member of the Public Morals Bureau and countersigned by a Public Morals Bureau superior officer.

Continuity of P.M.B. property clerk's serial numbers shall be recorded in a bound book. The Commanding Officer of the Public Morals Bureau shall examine such book daily for accuracy and completeness of all entries concerning such evidence or contraband.

A Police Department safe (Mosler, serial number 18819-43, Model 12) shall be provided for the foregoing purposes. The combination shall be changed at the start of these procedures and shall be changed semi-annually thereafter. The combination shall only be known to the Chief of Police, the Commanding Officer - Public Morals Bureau and two (2) subordinate superior officers assigned to the P.M.B.

**GENERAL ORDER 34-92  
INFORMANTS IN UNDERCOVER OPERATIONS**

**I. PURPOSE:**

1. To determine if a crime is being planned or committed.
2. To identify all persons involved.
3. To obtain evidence for court.
4. To locate contraband or stolen property.
5. To determine a suitable time for executing search warrants and/or arrest warrants.

**II. DEFINITION:**

Undercover work is an investigative process in which disguises and pretexts are used to gain the confidence of criminal suspects for the purpose of determining the nature and extent of any criminal activities they may be contemplating perpetrating.

**III. BUY PROCEDURES:**

1. Agent Buy: Directly involves the undercover police officer in the purchase of a contraband substance. This type of a case is ideal for prosecution because the trafficker has sold directly to a law enforcement officer; and that fact usually convinces a jury of the suspect's guilt.
2. There are two (2) methods to utilize when an undercover officer in making buys.
  - a. Buy bust: is a very useful procedure for the narcotics unit. By using this method, the unit does not have to actually spend its buy money. The dealer is arrested at the time of the sale. If money is used, the serial numbers should be recorded. This money found on defendant at time of arrest is additional evidence against the defendant that the sale did take place and all money found with the recorded money can be seized.
  - b. Walk-away: If a buy is made by the officer but an arrest warrant is obtained at a later date. This protects the identity of the undercover police officer and enables the officer to work his way into the drug circle and to make buys from as many traffickers as possible. Once completed, arrest warrants are obtained for the sales and arrests are made.



PAGE 2/GENERAL ORDER 34-92  
INFORMANTS IN UNDERCOVER OPERATIONS

In both cases, surveillance will be used for protection of the undercover officer whenever possible. However, during long term investigations this may not be possible. In this case, the officer needs to evaluate each situation and use good judgement.

3. **Controlled Informant Buy:** Is the least prosecutable of buy cases if the informant is to be used as a witness in court. The informant is usually involved in criminal activities himself and it becomes a matter of one criminal's word against another. This method is most commonly used in obtaining search warrants. You must establish the reliability of the informant. the following procedure is to be used if controlled buy informant is used.
  - a. Thoroughly brief the informant.
  - b. Make some independent effort to authenticate the informant's information.
  - c. Make no promises to the informant. His participation must be completely voluntary.
  - d. If possible have informant telephone the suspect while you monitor the call.
  - e. Search the informant, making sure that the informant does not have any contraband on his person.
  - f. Take all money and personal property from informant and return after buy is made.
  - g. Give informant official funds and record the serial numbers.
  - h. Set up surveillance of informant and maintain continual surveillance until informant completes buy and returns.
  - i. After the buy, secure the evidence.
  - j. Search the informant again. This assures that the informant is not holding back on the money and does not have any of the evidence or other contraband on him.
  - k. Return the informant's personal belongings to him.



**PAGE 3/GENERAL ORDER 34-92  
INFORMANTS IN UNDERCOVER OPERATIONS**

1. Advise informant how and when to maintain contact with you.

**IV. ESSENTIAL PROCEDURES AND POTENTIALS:**

1. Undercover work will never be undertaken without authority unless a situation develops where it is impractical to contact a superior and immediate action is appropriate. Unsupervised and uncontrolled buys will only be made in serious or critical situations. In every case, a complete written report will be submitted stating the circumstance requiring an unsupervised, unplanned, or uncontrolled buy.
2. During the preliminary investigation, determine requirements by obtaining as much as you can about the suspect and the neighborhood.
3. Obtain a background story beforehand. Make every effort to live the part. Be ready for questions that might be asked. This applies to both officers and informants.
4. Maintain communications among surveillancing officers and surveillance on undercover officers or informants.
5. Suspect may want the undercover officer to use part of the drugs he purchases. In this situation, the officer must avoid its use. The officer can simulate smoking marijuana or fake taking a tablet or capsule. In the case of heroin or cocaine, the officer will have to bluff his way out and still maintain credibility with the suspect.
6. Do not spend more money than would be normal for assumed character and position.
7. In general, do not associate with or court women or men who are associated in any way with the suspect.
8. Women informants used in controlled buy situations:
  - a. are to be searched by a police woman or matron.
  - b. Follow same procedures in making controlled buys.
  - c. Maintain constant surveillance.
  - d. Be cautious. Women informants are more likely to make accusations against a police officer than any other informant, especially if informant is working off pending charges

**PAGE 4/GENERAL ORDER 34-92  
INFORMANTS IN UNDERCOVER OPERATIONS**

- e. Avoid being seen with informant in area where investigation is being conducted. This will minimize any problems that may arise.
- f. Whenever possible, have another officer with you while working women informants. This will minimize any problems that may arise.
- g. Do not get friendly with any informants (male or female). Maintain relationship only on a working basis.
- h. Never trust or rely on an informant. Be cautious and skeptical. This is also standard procedure for a suspect.
- i. Do not take part in any criminal act or law violation without the prior knowledge and approval of the Chief of Police.

**9. AVOID ENTRAPMENT**

- a. Definition: An act by a law enforcement officer characterized by inducing a person to commit a crime that he would not normally commit.
- b. An officer may provide the opportunity to commit a crime, but not the criminal intent.
- c. Search the informant again. This assures that the informant is not holding back on the money and does not have any of the evidence or other contraband on him.
- d. Return the informant's personal belongings to him.
- e. Advise informant how and when to maintain contact with you.

- 10. Observed sale: Where the officer actually observes a street sale take place and both parties are arrested. The seller, the purchaser, and the evidence is recovered.



**GENERAL ORDER 35-92  
EVIDENCE AND PROPERTY HANDLING**

**I. INTRODUCTION**

The proper collection, preservation, and handling of physical evidence is becoming increasingly important. The chain of evidence from recovery to the time of court presentation is being carefully scrutinized by the courts. Thus the proper handling of physical evidence may be a determining factor in the successful prosecution of criminal cases.

To insure that the physical evidence collected by Gary Police Department personnel will meet the requirements of the courts, it is necessary to establish standard procedures which will permit the proper collection and preservation of evidence.

Found property and confiscated property while not as critical from a judicial standpoint, must be handled with equal diligence to insure its proper disposition.

All property shall be the responsibility of the person accepting the property until such time as the property is delivered to the Property Clerk or Evidence Custodian.

- A. **Evidence** - Any item of property seized by an officer that is directly related to a case under investigation; the seizure of which is intended for use in the identification of suspect, and/or in court presentations in that case.
- B. **Found Property** - Any lawful item of property, the control of which is assumed by an officer for the purpose of returning the property to its rightful owner, whether the owner is known or unknown.
- C. **Confiscated Property** - Any item of property seized by an officer that does not meet the criteria above the evidence or found property.

**II. EVIDENCE HANDLING PROCEDURES**

- A. Officers involved in the evidence collection process should use discretion in collecting evidence items. Evidence storage space is critical, therefore, only items of sound evidentiary value should be collected.

PAGE 2/GENERAL ORDER 35-92  
EVIDENCE AND PROPERTY HANDLING

- B. The evidence will not be accepted if the following guidelines are not followed. The evidence will be returned to the Turn Lieutenant or Supervisor for proper tagging.

III. COLLECTION OF EVIDENCE

- A. Liquids - No flammable liquids will be brought into the police department. If there is a flammable liquid for evidence, the HazMat technician, Fire Department representative or Bomb Technician should be notified concerning the proper handling storage or disposal of said liquid.
- B. Evidence tags will not be wrapped around a can, bottle, etc., as the container cannot be properly identified as to the type or brand. The evidence tag can be attached to a bottle by a piece of string.
- C. All evidence will be sealed by the collecting officer and marked with his name, the date, time and case number.
- D. All evidence will be tagged separately and will not be placed in the same bag as any other to prevent any form of contamination of the evidence.
- E. If more than one container is tagged as evidence, show ownership to each container on the property sheet and on the evidence itself. Each item will have a separate tag and separate bag.

IV. DRUGS

- A. Be very careful when handling drugs as they can be absorbed through the skin.
- B. Drug evidence will be tagged separate from all other evidence. A separate property sheet and copy of the report will be made along with a copy of the arrest form.

Narcotics are sent to the Indiana State Toxicology Laboratory by the Public Morals Investigator assigned to the case for testing. All other evidence is kept by the Evidence Custodian.



PAGE 3/GENERAL ORDER 35-92  
EVIDENCE AND PROPERTY HANDLING

- C. Different type drugs will be placed in different bags so as not to contaminate each other.
- D. Narcotics will also be initialed, dated and times like any other evidence. If it cannot be done on the evidence itself, initial the evidence bag.
- E. If large amounts of narcotics are taken, the Public Morals Division will be notified immediately.

V. TOOLS

- A. Evidence tags will be attached by a piece of string, not by tape.
- B. Mark the tools with the officer's initials, date and time in a place that will not interfere with other markings that might be important as evidence.
- C. If there are markings on the tools to be preserved as evidence, wrap the tool in paper. Also note same on the property sheet so it can be tested.

VI. WEAPONS

- A. All firearms will have an NCIC check made and a copy of the teletype will be attached to the property sheet and report.
- B. If there is not a serial number on the firearm it will be noted on the property sheet.
- C. All weapons will be initialed, dated and timed by the officer obtaining the weapon in a place so as not to damage the weapon. For example: Under the grips on a gun.
- D. All ammo will be placed in a separate bag away from the firearm.
- E. All firearms will be unloaded before being placed in evidence. If the gun is jammed or for some other reason it cannot be unloaded the supervisor and Desk Sergeant will be notified immediately.

**PAGE 4/GENERAL ORDER 35-92  
EVIDENCE AND PROPERTY HANDLING**

- F. Tape will not be put on any weapon. The evidence tag will be placed on the weapon with string or the weapon placed in an evidence bag.

**VII. BLOODY CLOTHING/FABRICS**

- A. Wet items will not be placed in a plastic bag as this causes rapid decomposition and destroys the evidence.
- B. If the officer obtains wet clothing that officer will immediately notify Crime Lab or Evidence Custodian. The Officer will have the evidence tags ready to be turned in along with all paper work.
- C. If Crime Lab is not working, the Desk Sergeant will be told about the wet clothing immediately, and the evidence custodian or crime lab will be notified as soon as possible. All paper work will be completed on the items.
- D. In the event that someone needs to enter the Evidence Room the Evidence Custodian will be present at all times.
- E. This is to ensure that entry to the Evidence Room is controlled to prevent any alteration, unauthorized removal, theft, or other compromise of evidence.
- F. An Evidence Room Log Sheet will be signed when personnel enter the evidence room. The date, case number, reason for entering, time in, time out, name printed and named signed will be noted on the log sheet.

**VIII. SEPARATING EVIDENCE**

- A. All juvenile evidence will be separated from other types of evidence.
- B. All narcotics evidence will be separated from other types of evidence.
- C. All found property evidence will be separated from other court evidence.



PAGE 5/GENERAL ORDER 35-92  
EVIDENCE AND PROPERTY HANDLING

- D. Different types of narcotic evidence will not be put in the same evidence bag as this may cause cross-contamination of the evidence. Tests cannot be run on evidence that has been contaminated by other substances.

IX. SUBMISSION OF EVIDENCE TO LABORATORY

When a number of personnel are involved in the investigation of a crime, a false assumption may be made that someone else has taken action to get evidence to the lab for examination. It will be the responsibility of the investigator assigned to insure that a written request for the examination is submitted to the Crime Lab for examination. The request should identify the type exam requested. (i.e., blood, semen, glass fragments, latent examination, etc.)

Requests should be submitted within five (5) working days on a standard memo form with all pertinent information, (i.e. complaint, victim, subject and material to be tested); except for latents for which a fingerprint comparison request will be used.

Procedures for the submission of evidence to a laboratory will be as follows:

- A. A written request will be required for all cases where evidence is to be submitted to any laboratory for analysis. The written request will vary in accordance with the particular laboratory to which it is sent.
- B. Indiana State Police Laboratory Division required the use of their request for laboratory examination form 38930R2.
- C. F.B.I. Laboratory required the letter type request. If a laboratory refuses to accept evidence that does not include known samples, that evidence will remain in the custody of the Evidence Custodian until known samples are collected or until there is authorization destruction. In any case a supplemental report will be made to note the refusal of the laboratory to accept evidence. Any destruction of evidence is noted on an evidence destruction form.

**PAGE 6/GENERAL ORDER 35-92  
EVIDENCE AND PROPERTY HANDLING**

**X. ACCOUNTABILITY AND INSPECTIONS**

- A. The Evidence Custodian is accountable for control of all evidence accepted for storage as evidence until final disposition.

The Property Custodian is responsible for all found and confiscated property as well as recovered property not to be used as evidence. The Property Custodian is responsible for all found and confiscated property as well as recovered property not to be used as evidence.

The Property Custodian is responsible for all Departmental property. Large evidence items will be kept by the Property Custodian in a secured cage in the supply room.

Items of evidence may be returned to the owner with written permission from the Prosecutor/Judge handling the case. The written release from the Prosecutor/Judge will state:

1. What the item is,
2. Serial number or other identifying number,
3. Description of the item,
4. What type of photographs to be taken, if any, and
5. To whom the item may be released.

Property may be released to an owner only after reasonable proof of ownership has been presented to the property custodian.

- B. Records of evidence will be kept in several different methods, each system backing up the other:

1. Evidence Log - The case number, officer, incident type, item location and description of evidence.
2. Computer - The case number, date evidence obtained by evidence custodian, item of evidence, location of evidence, date and how evidence was disposed of, and weapon information.



**GENERAL ORDER 36-92  
DUTIES AND RESPONSIBILITIES OF THE COMMANDING OFFICER OF  
THE TECHNICAL SERVICE DIVISION**

1. The commanding officer of the Technical Services Bureau shall be responsible for the administration, supervision and control of the following units of the Department.
  - A. Custodial Services Unit,
    1. Police Headquarters Building
    2. Police Headquarters Parking Lot
    3. Court and Court Facilities
  - B. Court Services Unit
    1. Court Officers
    2. Court Subpoenas Processing Unit.
    3. Warrant Service Squad
    4. City Clerk Services
  - C. Correctional Services Staff
    1. Cell blocks
    2. Prisoner Services
    3. Jail records
  - D. Main Desk
    1. Main desk records
  - E. Property Clerk Unit
    1. Property Clerk Unit
    2. Physical Property Control
    3. Property Clerk Security
  - F. Bureau of Identification
    1. Photo Unit
    2. Forensic Section
    3. Criminal Information Unit
  - G. Records Section
    1. Statistical Preparation Unit
    2. Records Security
    3. Civilian Supportive Personnel
  - H. Special Assigned Functions
    1. Code Enforcement Detail
    2. Technical Services Bureau In-Service Training
  - I. Communications Division

PAGE 2/GENERAL ORDER 36-92  
DUTIES OF COMMANDER OF TECHNICAL SERVICES

2. The Commanding Officer of the Technical Services Bureau shall ordinarily perform duties during the hours 9 a.m. till 5 p.m. - Monday through Friday and is expected to be available at police headquarters during his tour of duty.
3. The Commanding Officer of the Technical Services Bureau shall respond to police headquarters for emergencies concerning any of the units under his command regardless of the time of day or night.
4. There will be no exceptions to any of the foregoing without specific permission of the Deputy Chief or Chief.

**GENERAL ORDER 37-92  
TRANSPORTATION FOR PSYCHIATRIC PATIENTS**

In conjunction with requests from the Judge of Gary City Court and the Judge of the Lake Superior Court, Room 4, the Police Department will transport psychiatric patients from Saint Mary Medical Center to the Northwest Indiana Psychiatric Evaluation Center. Two police officers must be assigned to each transfer and they will be accompanied by a medical attendant from Saint Mary Medical Center on all such transfers.

The Medical Director, Gary Community Mental Health Center has guaranteed that violent patients will be either restrained or sedated chemically prior to transfer.

Request for such transfers will originate at the Saint Mary Medical Center and they will telephone the Radio Dispatcher at the Communication Division of this Department for implementation of the foregoing procedures. Medical Director has promised that there will be no delay at the pick-up point or discharge location. No more than two to five such transfers per week are anticipated. Members of the force are requested to return the psychiatric attendant to Saint Mary Medical Center safely, if such attendant has no means of transportation.

The foregoing order will be complied courteously with the safety of patients and the safety of the police officers considered foremost.



**GENERAL ORDER 37.1-92  
TRANSPORTATION FOR PSYCHIATRIC PATIENTS BY  
GARY FIRE DEPARTMENT ESCORTED BY  
GARY POLICE DEPARTMENT**

Following is a summary of the agreement made among the Gary Police Department, Gary Fire Department and the Gary Community Mental Health Center regarding the transporting and assessing of psychiatric patients.

- I. Request for transportation from the Gary Community Mental Health Center.
  - A. Requests for transportation from the Gary Community Mental Health Center shall continue to be made through the Gary Police Department who will contact the Gary Fire Department. The arrival time of the police officer(s) and the ambulance will be coordinated through their respective dispatch operators. The Gary Mental Health Center will handle the patient until the other parties coordinate their schedules;
  - B. The Gary Mental Health Center will be aware that the Gary Fire Department will send an ambulance as soon as one is available pending disposition on any emergency cases they may have;
  - C. The Gary Mental Health Center will have the patient ready for transport upon arrival of the police and fire department personnel.
- II. Transportation of patients picked up by the Gary Fire Department and the Gary Police Department in the Community
  - A. Emergency cases (those presenting a question of danger to self or others, or those presenting symptoms of irrational or unusual/bizarre behavior) will be picked up in the community by the Gary Police Department and transported by the Gary Fire Department to the St. Mary Medical Center Emergency Room for a mental health evaluation;
  - B. If the Fire Department receives a call to transport a patient the Gary Police Department will be notified and a police officer(s) will meet and accompany the Fire Department personnel;



PAGE 2/GENERAL ORDER 37.1-92  
TRANSPORTING MENTAL PATIENTS

- C. When the Gary Fire Department transport the patient, they can leave, understanding that if the patient becomes an emergency detention, they will be called to return to transport the patient from the hospital emergency room to the Northern Indiana Psychiatric Evaluation Center (N.I.P.E.C.) following the procedures outlined in section I;
- D. When the Gary Fire Department ambulance is involved, the Fire Department will alert, by code, the St. Mary Medical Center Emergency Room, that they are in route with a psychiatric patient. The Emergency Room staff will notify the Gary Mental Health Center Emergency Service Staff;
- E. When an ambulance is not available and the patient is in grave emergency state (a danger to self and/or others the Gary Police Department officer(s) will notify their dispatcher who will alert the St. Mary Medical Center that the police are in route with a psychiatric patient. The Emergency Room Staff will notify the Emergency Service Staff;
- F. The police officer(s) will remain with the patient until an evaluation with a recommendation is completed. It has been agreed that the preference is that the case be medically triaged and cleared by the Emergency Room doctor first. When the Emergency Room is backed up and the patient is presenting no physical symptomatology, the mental health assessment can begin before the patient is cleared by the Emergency Room doctor in order to expedite the assessment time so as not to delay the police officer(s). Hopefully the assessment and medical clearance can be completed within one (1) hour.
- G. If an admission, either voluntary or emergency detention is needed, the Gary Police Officer need only remain until the hospitalization is effected. The Gary Mental Health Center will obtain the emergency detention order and process the necessary documents. Non-voluntary patients can be placed in restraints, if indicated, and the police officer(s) can leave.

PAGE 3/GENERAL ORDER 37.1-92  
TRANSPORT MENTAL PATIENTS

III. JAIL EVALUATIONS

- A. A request for services for a person(s) in jail seen as needing emergency evaluations (are a danger to self and/or others) will be made by the Gary Police Department by contacting the Gary Mental Health Services (885-4264). If a staff member is available, an evaluation will be performed on site at the jail. If a staff member is not available, the Gary Police Department with the Gary Fire Department ambulance will transport the person to the St. Mary Medical Center Emergency Room. The Gary Police Department may transport the person if emergent and if an ambulance is not readily available. In either case the Police Department will call the Emergency Services first to alert them that an emergency evaluation is in route.
- B. If needed, other non-emergency persons in jail will be referred by the police department to the Emergency Service and a pre-screening process via telephone, will be completed in an effort to evaluate and effect recommendations, thereby averting a transport.

**GENERAL ORDER 38-92  
CORRECTIONAL SERVICES SECTION**

A Correctional Services Section has been established within the Technical Services Bureau effective 0800 hours, April 6, 1981.

The duties and responsibilities of the Commanding Officer of the Correctional Services Section shall be as follows:

- A. Assignment, administration, control and supervision of male and female correction officers and police officers while assigned to this duty.
- B. Management of all Gary Police Department detention cells and cell blocks and records associated with their use.
- C. Administration and control of prisoner services.
- D. Administration and control of all detention accommodations including but not limited to:
  - 1. Physical facilities including inmate alarm systems, etc.
  - 2. Prisoner records.
  - 3. Medical records.
  - 4. Food supply and preparation.
  - 5. Budgetary control and inventory of all supplies and equipment.
  - 6. Visitation privileges.
  - 7. Visitor records.
- E. Regular in-service training of all assigned personnel.
- F. Detention cell furnishings and equipment including fire alarms, etc.

The Commanding Officer of the Correctional Services Section shall also perform such other duties as directed by the Commanding Officer - Technical Services Bureau.



PAGE 2/GENERAL ORDER 38-92  
CORRECTIONAL SERVICES SUPPLEMENT DEFINITIONS

**JAIL** A confinement facility, usually by a local law enforcement agency, which holds persons detained pending adjudication and/or persons committed after adjudication for sentences one (1) year or less. Jails, while intended for the confinement of adults, sometimes hold juveniles as well. (This is also a definition of a detention facility).

**HOLDING FACILITY OR LOCK UP**

A temporary confinement facility, for which the custodial authority is usually less than 48 hours, where arrested persons are held pending release, adjudication, or transfer to another facility.

**INMATE** Any person whether pretrial, unsentenced, or sentenced, who is confined in a detention or holding facility.

**SECURITY OR CUSTODY**

The degree of restriction of inmate movement within a detention/correctional facility, usually divided into maximum, medium and minimum risk levels.

**CLASSIFICATION**

A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and programs according to their needs and existing resources.

**SUPERVISION**

Is the sum total of all the techniques used by supervisors to influence subordinates to achieve specific objectives.

**SURVEILLANCE**

In a jail is used to monitor rather than to direct activities.

1. It involves minimal contact with prisoners.
2. It has limited usefulness.
3. It cannot replace supervision, which demands close contact with prisoners.
4. It tends to ignore human factors required to insure prisoner behavior.



PAGE 3/GENERAL ORDER 38-92  
CORRECTIONAL SERVICE SUPPLEMENT

5. There is no substitute for person to person supervision.

POSITIVE JAIL CLIMATE REQUIRES:

1. Staff preserve inmates' self-respect by treating them as individuals.
2. This will contribute to improved morale and reduce tensions among jail personnel and inmates.
3. Cooperation of staff and inmates necessary and cannot exist in hostile atmosphere.
4. Jail personnel responsible for safety and welfare of inmates cannot be delegates to other inmates.
5. When inmates supervise other inmates staff no longer has control of the jail.

SUPERVISION IS DIRECTING THE ACTIVITIES OF OTHERS:

1. It is a social process requiring
  - A. Personality
  - B. Supervisory behavior
  - C. Supervisory Techniques
2. Not much can be done with a person who has an inadequate personality for a supervisor's position.
3. Supervisory behavior and techniques can be learned
  - A. They must become an integral part of supervisor's thinking and behaving on the job.
4. Effective supervisory techniques result in conformity.
5. Prisoners do not follow orders because they are afraid of jail personnel.
6. Prisoners generally cooperate if treated humanly, and their needs are being met.

**PAGE 4/GENERAL ORDER 38-92  
CORRECTIONAL SERVICE SUPPLEMENT**

**OBJECTIVES OF SUPERVISION IN A JAIL:**

**BASICALLY DEVELOPMENT OF AN ORDERLY ENVIRONMENT**

1. Prevention of escapes
2. Safekeeping of prisoners
3. Control of jail

Require physical presence of personnel in the jail.

**CORRECTIONAL GOALS**

1. To provide for the protection of society by the safe keeping of offenders committed to institutional custody.
2. To provide for the protection, care, and welfare of the inmates.
3. To provide for suitable programs for the rehabilitation of offenders, and
4. To establish and maintain an efficient correctional agency.

**CIVIL AND CRIMINAL LIABILITIES OF JAIL OPERATIONS  
VICARIOUS LIABILITY OF SUPERVISORS**

1. Negligent hiring
2. Failure to direct
3. Failure to train
4. Negligent supervision
5. Negligent assignment
6. Negligent retention

**CONSTITUTIONAL RIGHTS UNDER THE CIVIL RIGHTS ACT OF 1871**

1. If inmate is harassed, beat and sexually assaulted by another inmate - Supreme Court rules that the sheriff, warden assistant warden, shift supervisor, and the corrections officer supervising that inmate are liable. Classification officer could also be included. All can be sued for heavy punitive damages.

**PAGE 5/GENERAL ORDER 38-92  
CORRECTIONAL SERVICES SUPPLEMENT**

**CLOSE SUPERVISION OF INMATES ESSENTIAL BECAUSE:**

1. Inmates are constantly exposed to rape and assault.
2. Supervisors and corrections officers are liable for inmate behavior.
3. Supervisors and corrections officers can be sued for heavy punitive damages.
4. Supervisors and corrections officers subject to punitive damages when they act with indifference in the manner they perform their work - leave their post of duty; fail to visually supervise each inmate.
5. Punitive damages are personal and not official
6. U.S. Supreme Court decision against the Prince George County Detention Center, College Park, Maryland in 1983.

**NEGLIGENT HIRING**

sheriff or whoever does the hiring must have good testing and selection procedures to eliminate the unfit.

**FAILURE TO DIRECT**

Development of a policy/procedure manual to serve as a guide for operations.

**FAILURE TO TRAIN**

All jail personnel must be trained concerning the division's policies and procedures. Training must include all aspects of jail operations and administration, example - suicide incidents grievance procedures.



PAGE 6/GENERAL ORDER 38-92  
CORRECTIONAL SERVICE SUPPLEMENT

NEGLIGENT SUPERVISION

Supervisor knew or should have known the quality of staff he is supervising and used appropriate procedures to insure proper work performance of his subordinates. Most documented violations and staff attitudes; submit written reports to administration. Failure to supervise properly brings on lawsuits for negligence supervision.

NEGLIGENT ASSIGNMENT

Again, supervisor know or should have known if a subordinate is obviously unfit for a sensitive assignment, then supervisor is under obligation to change that subordinate's assignment. Failure to do so subjects all supervisors who knew or should have known to a law suit or negligent assignment.

NEGLIGENT RETENTION

If a subordinate is obviously unfit for service, then everything said about negligent assignment above also applies to negligent retention. When an administrator supervisor is aware concerning the incompetence of a subordinate, he should have him removed from the service.



GENERAL ORDER 38.1-92  
CODE OF ETHICS - CORRECTION SERVICE PERSONNEL

An employee of the Gary Correction Services Section, I pledge myself:

1. To strive to maintain the highest moral personal conduct so that I place the welfare of my section, my City, my State, and my Nation above the loyalty to any special interest, group, or person.

Employees should be extremely careful that personal commitments do not in any way negatively affect performance of one's duties within the Correction Services Section. Care is to be taken also to assure that no relationships are formed nor actions of a sexual nature are engaged in, either verbally or otherwise, with any inmate.

2. To uphold the Constitution of the United States and the State of Indiana, and to comply with all laws and legal regulations established for my guidance in the proper performance of my duties.

If any employee willfully disregards any law in regard to performance of duties, that employee is guilty of a law violation as certainly as any inmate.

3. To give a full day's work; to put forth my best effort in carrying out any official obligations so that I shall fulfill my personal responsibilities as a loyal and efficient employee.

An employee should never allow an inmate to do work the employee is to do. This includes such tasks as count, making work assignments or calling in counts.

4. Never to discriminate for or against any person or group because of differences or similarities in political thought, religious belief, race, or ethnic background.

Personal biases and feelings have no place in correctional work. All persons must be accepted on an even basis.

5. To make no private commitments of any kind binding upon the duties of my office, since a city employee has no private work which can be binding upon public duty.

An employee is never to make any private contract or agreement as to how he/she will perform any job.

PAGE 2/GENERAL ORDER 38.1-92  
CODE OF ETHICS/CORRECTION SERVICE PERSONNEL

6. Never to contract for any business with the Correction Services Section or any local, state or federal agency of government, which would be inconsistent with my role as a public employee, or which would interfere with the honest performance of my official duties and obligations.

Do not establish any business commitments of any type that could in any way cause question to be raised about your job responsibility.

7. Never to reveal confidential information contained in the personal records of either employees or inmates, unless duly authorized to do so by Department policies or by my supervisors.

Unless specifically authorized, do not reveal any information relative to employees, inmates, or facilities.

8. To maintain all city property entrusted to my care, and to never make unauthorized personal use or appropriation of city materials, goods, tools, or services.

An employee is charged with the protection to all city property. It must be safeguarded against theft, abuse, misuse or inappropriate use.

9. To never solicit or accept any free services, gifts, or gratuities from any inmate, parolee, probationer, or from a member of their family or friends; and furthermore, I shall not give or donate any item to any inmate, parolee, or probationer, unless duly authorized to do so by my supervisors.

Any employee should give nothing and take nothing from any prisoner. Neither should anything be given or taken from anyone related or acquainted with a prisoner.

10. To uphold the above-listed principles, ever conscious that public office is a public trust.

Conduct yourself as a City employee, as if the entire success and reputation of the Department rests upon you.

181



**GENERAL ORDER 38.2-92  
RULES AND PROCEDURES FOR CORRECTIONAL OFFICERS  
(WARDENS AND MATRONS)**

Wardens and Matrons shall make a search of all prisoners before they are confined and shall take from them all valuable possessions and other property that might be used by them to cause physical harm to themselves, i.e., belts, neckties, straps or any other similar articles or implements. The property shall be labeled, and the proper record of entry made on a standard department form or book in use by the detention section.

Wardens and Matrons shall not place any unconscious or injured person in a cell or detention room unless ordered to do so by a superior officer or by orders of a physician. In the event any prisoner becomes ill or injured while in detention, Wardens and Matrons shall immediately notify the officer in charge. Medical aid will be obtained for sick or injured prisoners when necessary.

Wardens and Matrons when bringing a prisoner to his or her cell, shall give the prisoner a blanket, a mattress, and allow the prisoner one phone call. If the prisoner is intoxicated, they will not be allowed a phone call until such time as they are sober. When releasing prisoners, the Warden and Matron shall see that the mattress is cleaned, the blanket is folded and placed in its proper place, and that the cell is cleaned prior to the prisoners being released. ~~The prisoner is then taken~~ to the front desk, given his property and released.

Wardens and Matrons shall put a prisoners name on a sign-out sheet when a prisoner is taken out for questioning as well as the person signing him out. The time and the date, also the time when the prisoner is returned to the cell will be recorded on the sign out sheet.

Wardens and Matrons shall keep a necessary reserve of all supplies used for the operation of the detention quarters, and shall be held strictly responsible for the security of all doors, locks and cells of the detention area while prisoners are in confinement.

Wardens and Matrons will report any unusual incidents or questionable actions of prisoners that come to their attention, including the detention of any contraband or forbidden items. They shall report any condition or hazard that may result in personal injury, fire or damage to the detention room cell or area.

PAGE 2/GENERAL ORDER 38.2-92  
RULES AND PROCEDURES

Wardens and Matrons may purchase cigarettes for prisoners out of their own money being held for them, providing the police charges pending against them do not relate in any way to this money. In the event of a purchase made from such money, the amount expended shall be entered in the proper records.

Wardens and Matrons shall not place or confine adults and juveniles in the same room or cell for detention purposes.

Wardens and Matrons shall not grant special privileges to prisoners without the permission of their Commanding Officer or the Officer in charge of the Arresting Division.

Matrons working the 8 am to 4 pm turn shall take a copy of the Daily Bulletin from the Desk Sergeant, make copies of same and distribute to various departments as designated by the Technical Services Officer in charge, making sure that each department designated has a complete copy of the Daily Bulletin.

Correctional Officers shall check their prisoners at the beginning of each turn, once each hour and a final check is made before the end of the turn. These checks, or head counts are to be recorded on the head count sheet and any unusual circumstances, reference the condition of the prisoners or the cell assigned to them are to be noted by the Correctional Officer. The Correctional Officer performing the initial check will complete the Medical Record Form indicating the date, time, and condition of the prisoner. The Correctional Officer will sign the Medical Form when completed.

Wardens are at no time to check female prisoners in the cells unless accompanied by a matron or a policewoman. If no matron or policewoman is available they are to be accompanied by the senior officer on the turn.

No firearm is to be carried in the Gary jail proper by Correctional personnel, or police officers. This includes correctional officers with valid Indiana Gun Permits. Correctional Officers with valid Indiana Gun Permits are to check their firearms with the Desk Sergeant before starting their tour of duty.



**GENERAL ORDER 38.3-92  
DUTIES OF CORRECTION OFFICER  
UNUSUAL OCCURRENCE**

**I. PURPOSE**

To make notifications and investigate certain unusual occurrences relating to prisoners.

**II. DEFINITION**

Unusual occurrences relating to prisoners means that a prisoner in custody of this department:

- A. Dies
- B. Attempts suicide
- C. Assault a member of the Department
- D. Escapes or attempts to escape
- E. Is involved in any other occurrence of an unusual nature.

**III. CORRECTIONAL OFFICERS PROCEDURE**

- 1. Notify Desk Sergeant
- 2. Notify Detectives assigned to prisoners case if he or she is being held on probable cause, if detectives are unavailable notify their commander.
- 3. Prepare an official report and forward it to proper authority.
  - a. Desk Sergeant
  - b. Detectives (if applicable)

**GENERAL ORDER 38.4-92  
WARDENS PHOTOGRAPHING AND  
FINGERPRINTING OF PRISONERS**

**I. PROPOSAL**

That the 8 am to 4 pm turn and the 4 p.m. to 12 mn turn will do all the fingerprinting and photographing of prisoners in custody or taken into custody during their tour of duty. Recommend that the following procedures be followed by the Wardens pertaining to the fingerprinting and photographing of prisoners.

**II. 8 am to 4 pm Turn**

Since the midnight or 12 mn turn will not be fingerprinting or photographing of any prisoners, the responsibility of fingerprinting and photographing all prisoners in custody from the midnight turn, plus all prisoners during their tour of duty.

1. Obtain the gold copy of the arrest sheet from the box besides the report clerks desk and take to the Bureau of Identification for processing.
2. The Bureau of Identification will mark the arrest sheet with the following information concerning if a full local print card is needed or Full FBI card, or green sheet or GS, disposition sheet or a photograph is needed, plus issuing a Bureau of Identification number.
3. Wardens will then take the arrest sheet to the jail, ~~where~~ they will proceed to take the prisoner to the 3rd floor North Male section. The information on the arrest sheet will be gone over with the prisoner to get the correct spelling of their first, middle and last names, address, birthday, height, weight, color of eyes, hair, place of birth, social security number, alias names, place of employment, occupation, next of kin (like mother, father, brother or some other relative) and the ~~kins~~ address. Additional questions of information such as years of education, condition of teeth (good, bad, fair, false and etc.) complexion, build, scars, birth marks, tattoos and if they wear glasses.

**183**

PAGE 2/GENERAL ORDER 38.4-92

WARDENS PHOTOGRAPHING AND FINGERPRINTING OF PRISONERS

4. Upon starting to fingerprint the prisoner, have sign the print card first, then proceed the prisoner as called for on the arrest sheet as indicated by the Bureau of Identification personnel. If the warden is in doubt as to what cards he should use, he should proceed to fingerprint the prisoner using a Gary Police Department local print card, a FBI print card and a FBI green disposition sheet.
5. After the fingerprints have been taken, the photograph or mug board will be set up showing the days date, Bureau of Identification number and the prisoners date of birth. This board has a chain and will be attached around the prisoners neck once he/she is seated in front of the camera.
6. Photographing the prisoner, you will place the prisoner on the stool facing the camera and after lining up the prisoner in the camera for full face shot. After the full face photograph is taken, have the prisoner still facing the camera, turn only him/her left for a profile photograph.
7. Once the prisoners are all fingerprinted and photographed and returned to the cells, the wardens will return the fingerprint cards and arrest sheets to the Bureau of Identification, where they will be typed and necessary filing completed.
8. After seven (7) prisoners have been photographed or the counter on the camera shows fourteen (14), the warden will trigger the camera six (6) more times and reset the camera counter to zero. Whenever this is done, a note should be left on the counter stating the time and date that the film was advanced so the Bureau of Identification will know where to cut the film for processing.



PAGE 3/GENERAL ORDER 38.4-92  
WARDENS PHOTOGRAPHING AND FINGERPRINTING

4:00 p.m. to 12:00 mn Turn

Will follow the procedures as the 8:00 am to 4:00 pm turn.

Following are some terms that will be used on the arrest sheets by the Bureau of Identification that the wardens will need to know concerning the procedures to be followed in the fingerprinting and photographing of prisoners.

Full set of rolled fingerprints: Where all ten (10) fingers are rolled from one side of the finger to the opposite side of the finger.

Fixed impression: Where the fingers are placed straight down on the fingerprint card.

Local fingerprint card: Has the name of Gary Police Department on it, spaces for all ten (10) fingers to be rolled and at the bottom of the card for the fixed impression of all ten (10) fingers.

Full FBI card: Has the name of the Federal Bureau of Investigation on the back and typing and lines are in red. Has ten (10) spaces for rolled prints of all ten (10) fingers and at the bottom of print card, space for fixed impression of all ten (10) fingers.

Green sheet or GS: This is where a ~~fixed impression~~ of the right hand is placed on a FBI fingerprint card.

Disposition sheet: Green in color and the fixed impression of the four fingers of the right hand are placed on the bottom on the right side.

It is the responsibility of the Bureau of Identification to provide continuous instructions in the areas of photographing and fingerprinting inmates.

If a problem concerning the condition of a prisoner, such as being drunk, unruly or a physical or mental condition that prevents the photographing and fingerprinting, they will mark the arrest sheet stating the reason or problem and leave it for the next turn. If the second turn of wardens are unable to handle the prisoner, they should then notify the Bureau of Identification for assistance.



**GENERAL ORDER 38.5-92**  
**VISITING CLERGYMEN - CORRECTION FACILITY**

1. In order to insure religious assistance whenever needed or requested by prisoners in jail at the Gary Police Headquarters, permission will be granted by the Main Desk Superior Officer under guidelines established by the Commanding Officer - Correctional Services Section and approved by the Commanding Officer - Technical Services Bureau.
2. Clergyman requesting visitation privileges will be required to be on the approved list established after investigation by the Commanding Officer, Correctional Services Section and approval of the Commanding Officer - Technical Services Bureau. Applications for administrative clearance for visitation privileges will be on a copy of the attached qualification questionnaire and evaluated by the Gary Police Department's Chief of Chaplains for recommendation purposes prior to approval by the Commanding Officer Technical Services Bureau.
3. A numbered certified list of approved visiting clergymen will be maintained at the Main Desk and by the Commanding Officer of the Correctional Services Section at the Technical Services Bureau.
4. In an emergency situation where a visiting clergyman requests immediate visitation privileges with a prisoner and is not on the certified list, verbal clearance will be sought from a Gary Police Department Chaplain and approved by the Platoon Commander. A written record of such instances will be maintained by the Commanding Officer - Correctional Services Section.

**GENERAL ORDER 38.6-92  
CORRECTIONAL SERVICES SECTION**

In addition to other duties required by Correctional Services Section, the following specific responsibilities are established for all Wardens and Matrons and members of the force assigned to such duties:

1. Prisoners shall be searched for weapons prior to being removed from the downstairs holding cell. Normally the desk officer will notify the Warden/Matron that there is/are prisoner(s) to be taken to the main jail area. Correctional Officers are not to assume that prisoner(s) have already been searched by any others than themselves. Any weapons or evidence found by the Correctional Officer is to be given to the Superior Officer at the desk and a report made.
2. Upstairs the Correctional Officer will inventory the prisoner(s) property and complete the property slip in duplicate making certain that they are signed by the prisoner and the other is placed in the property bag which is then sealed. The property is then placed in the property locker located in the property room next to the desk. It is to be locked and secured at all times and the key given to the Correctional Officer's relief.
3. Upon release from custody the property is checked in the presence of the Correctional Officer by the prisoner and the property slips signed by the prisoner(s) and Correctional Officer. The prisoner is then brought to the desk officer where both property slips are attached to the arrest sheet.
4. If at any time the Correctional Officer has a question concerning the procedure or property of the prisoner he/she is to contact the superior officer on duty at the time.
5. When a prisoner has maliciously damaged City property, it shall be the responsibility of the correctional officer to notify the desk supervisor of said damages and to prepare an offense report reflecting damages; and file the proper affidavit with the City Prosecutor before the inmate is released from custodial detention.



**GENERAL ORDER 3B.7-92**  
**JAIL STANDARD OPERATING PROCEDURES**

1. Each day the jail should be swept and mopped before breakfast, and swept after each meal. The same for the catwalks. Cleanliness is to be maintained at all times, each prisoner is responsible for his cell.
2. When releasing a prisoner, he is to bring his blanket and mattress out with him. His blanket should be shaken and folded neatly, the mattress is to be cleaned thoroughly.
3. Each prisoner should take shower every day, soap and towels should be given out when available.
4. After every meal their tables should be cleaned.
5. Every correctional officer or warden should make sure the jail is clean and stays clean on his shift.
6. There should be more communication between correctional officers and matrons, about prisoners and jail procedures.
7. Prisoners should be let out of their cells, for at least eight (8) hours a day, on the 0800-1600 shift, back in their cells before the 0800-1600 shift is over.
8. Make sure each prisoner has his three (3) meals a day, he is to be given his breakfast before court or seen by a detective. If he is being seen by a detective at brunch time he is to be brought back to the jail to be fed than return to the detective bureau.
9. When a prisoner is taken from the jail a sign out sheet is to be used.
10. No blankets, mattresses, or phone calls when intoxicated or causing a problem.
11. At no time should prisoner be allowed food, candy, or pops from the outside.
12. Most of the jail cleaning should be done by prisoners.
13. Should have random shake downs.
14. We need our juveniles in sections for juvenile offenders.
15. Toilet and sink in cells should be cleaned three (3) times a week.

PAGE 2/GENERAL ORDER 38.7-92  
JAIL STANDARD OPERATIONAL PROCEDURES

16. Garbage cans should be emptied and cleaned everyday.
17. At the end of each shift every prisoner should be in his cell.



**GENERAL ORDER 39-92**

**DISPOSAL OF NARCOTIC RELATED PROPERTY/CONTRABAND, FIREWORKS AND ETC.**

**SECTION I. DISPOSAL OF NARCOTIC OR NARCOTIC RELATED PROPERTY BY THE GARY POLICE DEPARTMENT**

THE FOLLOWING PROCEDURES WILL BE FOLLOWED BY THE GARY POLICE DEPARTMENT CONCERNING THE DESTRUCTION OF NARCOTICS AND NARCOTIC RELATED ITEMS.

1. The Property officer of the Gary Police Department will check the case files on all narcotic or narcotic related items that have been in-custody of the Gary Police Department for six (6) months or longer. If the case in question has been rejected by the prosecutor, nolle prossed or case was never filed, or case has gone to court and the Judge has ordered it destroyed, the Property Officer will compile and itemized list containing an item number, case number and brief description of the property.
2. The Property Officer will forward the itemized list to the Chief of Police, Commander of the Technical Services Division and one copy for the Property Officer's file, stating that the following items are ready for destruction. Requesting that the Chief of Police assign a representative other than from the Technical Services Division to witness the destruction of the narcotic or narcotic related items.
3. Narcotic or narcotic related items that are suitable for combustion will be burned at a time and place of determination by the representative of the Chief of Police and Technical Services Division.  
  
Narcotic and narcotic related items that are not suitable for combustion or are of liquid form will either be destroyed by pouring the liquid in the city sewer or taking it out to some sandy soil, where it would pour into the ground, along with gasoline and set on fire, or other means of destruction.
4. The Property Officer will sign all property slips or case records with the disposition of these narcotics or narcotic related items along with the property log book being marked and the index card file card being marked as destroyed.
5. Indiana Code 35-1-5.1  
(F) Disposition by destruction of property, the possession of which is unlawful, shall be witnessed by two (2) persons who will also attest to the destruction.

PAGE 2/GENERAL ORDER 39-92  
DISPOSAL OF NARCOTICS AND CONTRABAND

SECTION II DISPOSAL OF CONTRABAND, FIREWORKS AND ETC. BY THE  
GARY POLICE DEPARTMENT

THE FOLLOWING PROCEDURES WILL BE FOLLOWED BY THE GARY POLICE DEPARTMENT CONCERNING THE DESTRUCTION OF CONTRABAND, FIREWORKS AND ETC. ITEMS.

1. The Property Officer of the Gary Police Department will check the case files on all contraband, fireworks and related items that have been in-custody of the Gary Police Department for six (6) months or longer. If the case in question has been rejected by the prosecutor, nolle prossed or never filed, or the case has gone to court and the Judge has ordered the contraband, fireworks or related items destroyed, the property officer will compile an itemized list containing an item number, case number and brief description of the property.
2. The Property Officer will forward the itemized list to the Chief of Police, Commander of the Technical Services Division and one copy for the property officer's file, stating the following property is ready for destruction. Requesting at this time that the Chief of Police assign a representative other than from the Technical Services Division as a witness to the destruction of the contraband, fireworks, or other related property.
3. Property of contraband, fireworks and related property that is suitable for combustion will be taken to sandy soil (most likely the beach area) where a hole would be dug and the contraband soaked with gasoline, placed in the hole, and ignited.  
  
Other forms of contraband, and related property would be destroyed depending on the form and condition of the property.
4. The Property Officer will sign all property slips, and case records with the disposition of these contraband items, fireworks and related items, along with the property log book being marked and the index card file card being marked as destroyed.
5. Time and place will be determined by the representative of the Chief of Police and Technical Services Division.



PAGE 3/GENERAL ORDER 39-92  
DISPOSAL OF NARCOTIC AND CONTRABAND

6. Under Indiana Code 35-1-5.1  
(F) Disposition by Destruction of Property, the possession, of which is unlawful, shall be witnessed by two (2) persons who also will attest to the destruction.

**GENERAL ORDER 40-92  
BOOKING OF PRISONERS BY ARRESTING OFFICERS**

It shall be the responsibility of the turn-key assigned to the Technical Services Division to see that the door to the turn-key's room is locked at all times. Officers bringing subjects on station to be booked will question the prisoner as to his physical condition, and inquire if any medical attention is needed. If the turn-key determines that the prisoner is requesting medical attention, prior to the time that he/she is placed in the turn-key's room, it shall be the responsibility of the arresting officer to take the prisoner to the hospital for the required medical care.

Once a prisoner is placed in the turn-key's room, he/she becomes the full responsibility of the turn-key and he is the only one authorized to remove them for any reason. Any additional information needed for the booking of a prisoner will be requested from the turn-key. Once a prisoner is booked and he/she requests medical attention it shall be the responsibility of the turn supervisor in the Technical Services Division to see that the prisoner receives the required medical attention. Medics will be called to the station to determine the extent of medical treatment needed. If the medic determines that the prisoner should be transported to the hospital, the turn supervisor in the Technical Services Division will inquire if the prisoner will be transported by ambulance. If the medic determines that no ambulance is needed, it shall be the responsibility of the turn supervisor in the Technical Services Division to notify the Communications Division that a Patrol Unit is needed on station to transport a prisoner to the hospital for medical treatment. Once a prisoner is released to the custody of the Patrol Unit for transportation to the hospital for treatment it shall be the responsibility of the transporting officer to remain with the prisoner until (a) the prisoner is confined to the hospital (b) the treatment is completed and the prisoner is released from the hospital. If the prisoner is released from the hospital, it shall be the responsibility of the Patrol Unit to return the prisoner to the custody of the turn supervisor in the Technical Services Division. If the prisoner is confined to the hospital, the transporting officer will notify his/her turn supervisor in the Patrol Division and the turn supervisor in the Technical Services Division. It shall be the responsibility of the turn supervisor in the Patrol Division to see that a guard is maintained on all prisoners confined to the hospital on felony charges. There should be no need to place a guard on a prisoner that is confined to the hospital on misdemeanor charges. When an inmate self inflicts an injury while in custody and requires medical treatment, the inmate/prisoner shall register



PAGE 2/GENERAL ORDER 40-92  
BOOKING OF PRISONERS BY ARRESTING OFFICERS

himself for treatment thereby releasing the City of Gary and Police Department from liability.

156

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**GENERAL ORDER 40.1-92  
BOOKING PROCEDURES**

Effective immediately the following changes in arrest procedures will be implemented. All subjects placed under arrest and brought to the Gary Police station will be given a regular case number and a official Gary Police Department arrest form completed. Posting of a bond immediately has no effect on the procedures:

1. Felony and Misdemeanor arrests will be processed as in the past.
2. Traffic Arrests: (DUI, DWS, NO OPER. LICENSE, ETC.) All individuals brought to the police station on traffic charges will be given a regular case number and a official Gary Police Department arrest form completed.
3. Warrant Arrest (Alias, Bench, Crown Point Warrant, Out of County, Out of State): All arrest warrants will be given a regular case number and a official Gary Police Department arrest form completed.
4. Serving Days: The 5 x 8 arrest form will be re-designed and used only for persons serving days.

**GENERAL ORDER 41-92  
PROCEDURE FOR EVIDENCE/PROPERTY**

**PROCEDURES FOR PROPERTY/EVIDENCE**

1. Property turned in will be stored in the two (2) cabinets already used as property holding spots.

The cabinets are located directly behind the desk sergeants desk.

The cabinet that has a cut drop slot on it's side will be used for the following evidence only, MONEY, NARCOTICS, & HANDGUNS. This cabinet is so marked. The only keys for the cabinet will be in the possession of the property clerk only. The side slot will be the dropping point.

The second cabinet will be used for bulk items such as RIFLES, SHOTGUNS, & OTHER SMALLER VALUABLES, the desk sergeant has a key to open this cabinet for placement of items.

2. TURNING IN PROPERTY

All property turned in will be logged into four (4) separate categories.

1. Narcotics
2. Money
3. Guns
4. Other (any item other than the three (3) above)

Each item turned in that falls in the first three (3) categories must have a separate property slip attached with the case number.

3. PROCEDURE IN EVIDENCE OR PROPERTY SLIPS

Officer turning in property will make out a property slip

The turn supervisor will double check to make sure that all items listed are correct and accountable, then sign the property slip.

Desk personnel will verify the accountability of the property and also sign the property slip.

PAGE 2/GENERAL ORDER 41-92  
PROCEDURE FOR EVIDENCE/PROPERTY

The desk personnel will then heat seal the property prior to dropping of the property in the cabinet.

Very large items will still be held where room allows.

4. PROPERTY CLERK

There will be a log book assigned for each of the four categories which will be kept by the property clerk, each book will have all entries concerning the property.

A small safe will be installed in the main vault which will be used for money only, the money and log book will be locked in the safe.

A metal file cabinet will also be placed in the main vault for narcotics use only.

The main vault will hold narcotics, guns, and money only. All bulk items will be stored in the locked B. of I holding rooms behind the training room.

A scale will be used to weigh each package of narcotics that is turned in or taken out.

No property will be accepted by the property clerk unless it is submitted properly.

HEAT SEALED, CORRECTLY INVENTORIED, CASED, PROPER SIGNATURES.

Four (4) log books will be correctly maintained, listing all items.



**GENERAL ORDER 42-92  
VEHICLE INSPECTIONS**

The motor check lane is located in the front of the Station on Broadway.

When individuals enter the station for a motor check, officers at the front information desk will be responsible to comply with their request. However, all police personnel will issue vehicle checks if and when requested by a motorist.

At no time will the officers at the front desk request an officer to be called in to issue motor checks.

**GENERAL ORDER 42.1-92  
VEHICLE INSPECTION DESIGNATION**

The parking zone identified for motor inspection directly in front of the police station is restricted for emergency parking and vehicle identification inspections only.

Persons parking their vehicles in this restricted zone are subject to have their cars towed.

**GENERAL ORDER 42.2-92  
MOTOR VEHICLE INSPECTION**

**PURPOSE:**

There will be a five (\$5.00) fee imposed for each motor vehicle inspection.

**PROCEDURE:**

1. Vehicle Motor Inspections will be administered between the hours of 8:30 a.m. until 3:30 p.m., Mondays through Fridays at the Gary Police Department, 1301 Broadway.
2. Individuals requesting motor vehicle inspections shall be directed to the Traffic Accident Report window to pay the fee and obtain a receipt.
3. Once the receipt has been obtained by the individual, it shall be the responsibility of the Desk Personnel to conduct the motor vehicle inspection in the designated Motor Check Lane in front of the station.
4. The desk personnel will validate the receipt by signing their signature on the back of receipt. The officer's signature is the official validation.
5. If the vehicle is not in the area of the station, the individual may come to the station, pay the fee - then present the receipt to any Gary Police Officer to administer the motor vehicle inspection and validation.
6. Businesses wishing to have vehicle motor inspection of their company/business fleet(s) must first come to the police station, pay the fee and obtain a receipt for the vehicles they wish to have inspected.
7. NO OFFICER IS AUTHORIZED TO ADMINISTER A MOTOR VEHICLE INSPECTION UNLESS THEY ARE PRESENTED WITH A RECEIPT.
8. Intake clerk shall record on receipt the make model, and vehicle identification number.

**GENERAL ORDER 42.3-92**  
**POLICE INSPECTION FOR OUT OF STATE VEHICLES, NEW RESIDENT**

In order to expedite police inspections of out of state vehicles and to assure the customer will process the title correctly, the Bureau of Motor Vehicles, Gary Office will issue a photocopy of the title to the customer along with a letter of request for the title. Police Officers administering the inspections shall make necessary indications for out of state title checks on the vehicle inspection form.

The Bureau of Motor Vehicles is not allowed to give the customer the actual title when a lien is showing.



**GENERAL ORDER 43-92  
PROCEDURES FOR EMERGENCY INCIDENTS**

The following is an outline of procedures for emergency incidents to be used during emergencies/disaster operations by members of the Gary Police Department. Each member of the force shall be familiar and use these procedures when directed to respond to any of the unusual situations described and outlined in this section.

All commanding officers are responsible that members of their staff are familiar with the contents as outlined. They have been prepared with a view to usage in the field.

**GENERAL ORDER 43.1-92  
AIRCRAFT DISASTERS**

There is only one airport in the City of Gary. The Gary Municipal Airport is located on Industrial Highway west US No. 12.

In the event of an airplane crash at the airport, the Radio Technician will be alerted by a telephone call from the Airport Control Tower. The Radio Technician will dispatch appropriate personnel and equipment.

The airport is under the control and jurisdiction of the Airport Authority, and in the event of a disaster, responding emergency/rescue units will be met and escorted to the site by Airport Authority Police.

The Police Coordinator at the disaster area shall establish an:  
- Inner Perimeter: Area wherein the damage is sustained and the wreckage of the plane is strewn.

- Outer Perimeter: Area where at vehicular traffic is excluded and pedestrian traffic is controlled, in order to prevent interference with operations being performed in the Inner Perimeter.

The Superior Officer of Command at the scene will confer with the Police Coordinator and ascertain the current status of the emergency/rescue operation, the type of aircraft involved, the number of passengers, and any existent problems which might hamper emergency operations. Except in cases of fire, he will direct emergency/rescue operations.

Police personnel will be assigned to the Inner Perimeter and:

- Perform primary disaster functions, i.e. - provide illumination, assist other agencies, search for victims, administer first aid, etc.

- Assist the Police Coordinator in securing the area from unauthorized persons by providing rope and any other necessary equipment.

- Cooperate with properly identified representatives of the National Transportation Safety Board (N.T.S.B.) and the Federal Aviation Agency (F.A.A.).

Police personnel shall observe the following precautions:

- They shall not smoke in the immediate vicinity of the disaster.

PAGE 2/GENERAL ORDER 43.1-92  
AIRCRAFT DISASTERS

- They shall not drive vehicles onto possible active portions of the airport unless escorted by a Port Authority vehicle which has radio contact with the Control Tower.
- They shall confer with representatives of the National Transportation Board before commencing the search to recover personal property.
- They shall be guided by the information received from the N.T.B.B. and F.A.A. in performing emergency operations on the plane or any part thereof.



**GENERAL ORDER 43.2-92  
TRAIN DISASTERS**

The primary function of police personnel at the scene of a railroad disaster involving serious or fatal injuries, is to provide relief for the injured and lessen the fatality hazard. The rescue function in these cases is divided into two (2) efforts, namely:

**1. Rendering aid to detained victims:**

- . Clearing the area of ambulatory persons.
- . Removing fencing to provide exit for victims and access for responding emergency personnel and equipment.
- . Securing cars which could possibly topple over.

**2. Rendering aid to injured and entrapped victims:**

It should be noted that train disasters may also involve shipment of explosive, chemical, or radioactive materials. Police personnel shall comply with the guidelines published by the Manufacturing Chemists Association on "Chem Cards" which indicate:

- The fire and exposure potential of the hazardous material.
- The corrective measures to be taken in specific cases, i.e. -- spill or leak, fire or exposure.

The following precautions shall be taken by police personnel at the scene of a train disaster:

- Always assume that the electric power is on.
- Maintain constant vigilance while in the track area. Always anticipate the possibility of moving trains even though the power has allegedly been turned off.
- Police personnel, acting as flagman, shall be located at least 3/4 of a mile from the emergency scene in the direction of oncoming traffic. The average train travelling at maximum speed, needs at least this distance to come to a complete stop.
- Flagman, when attempting to stop a train, shall wave their flashlight or a rolled up newspaper in a vigorous back-and-forth motion.
- A pre-arranged area of safety shall be selected, and used, in the event circumstances arise which might dictate such use.
- Securely fasten all items of clothing to prevent the possibility of loose clothing being caught on a moving train.

207



**GENERAL ORDER 43.3-92  
BUILDING COLLAPSE**

Buildings of the same class and type of construction tend to collapse in much the same way. They can be divided into two main categories:

- Unframed - the weight of the floors and roof are supported by the walls. Failing of the bearing walls, columns, or upper floor beams results in extensive collapse accompanied by large amounts of rubble and debris. Rescue operations in these cases are usually difficult, lengthy, and dangerous. Fortunately, rescues can be made because of the formation of voids created by structural members, etc.

- Framed - constructed of structural steel or reinforced concrete skeletons. The floors or roof are not dependent on the walls for support. Collapse is generally more localized and not so extensive.

Immediately after a collapse, the Operational Plan should, if possible, follow this general pattern: Contact the Fire Department, then:

- Survey the purpose for which building is used, number of occupants, number of people trapped and location, extent of damage, etc.
- Immediately rescue survivors who can be seen or heard or whose exact location is known.
- Explore strong or sheltered parts of building even though no definite information has been received that persons may be trapped thereat.
- Remove selected debris according to a predetermined plan developed through reconnaissance and prior experience.
- Clear general rubble after all other methods have been employed and persons are still missing and their location is unknown.

The following are Rescue Techniques which may be utilized:

- Clearing and removal of surface debris by hand.
- Trenching to reach specific locations.
- Tunnelling to reach specific locations.
- Breaching walls if this is the quickest way to reach a victim.

PAGE 2/GENERAL ORDER 43.3-92  
BUILDING COLLAPSE

- Shearing with timbers to brace walls and prevent further collapse.

The following precautions and guidelines should be taken, and followed, by police personnel assisting in performing Rescue Operations:

- Contact NIPSCO and Gary Hobart Water Department to cut off electricity, gas and water supplies.
- Provide sufficient illumination.
- Clear area of persons not usefully engaged in the rescue operation.
- Survey the building for weakened walls, floors, or roof
- Keep vehicle fleet and equipment away from weakened structures.
- Wear protective equipment, i.e. -- helmet, gloves goggles, mask, etc.
- Work in pairs, frequent relief, know whereabouts of all personnel.
- Coordinate activity if more than one operation is in progress.
- Do not smoke.
- Check for presence of gasses, refrigerants, chemicals, etc.
- Caution overzealous members. Enforce safety precautions.
- Avoid vibrations near weakened structures.
- Protect victims. Provide ventilation, if needed.
- Avoid unnecessary agitation of loose debris.
- Do not move natural props, such as open doors, supporting debris.
- Avoid cutting timbers that appear to support debris.
- Work around heavy obstructions, if possible.
- Do not pull or force timbers. Cut them to free other timbers.

PAGE 3/GENERAL ORDER 43.3-92  
BUILDING COLLAPSE

- Avoid cutting gas and water pipes.
- Wet down area if using cutting torch. Avoid igniting combustibles.
- Remove debris by hand when working close to victim.
- Cooperate fully with all interested parties and agencies.



**GENERAL ORDER 43.4-92**  
**FIRE**

The ranking Fire Officer at the scene shall be in command of emergency operations. The Commanding Officer shall confer with him to ascertain how police personnel can cooperate in the operation.

If the police personnel are the first to arrive at a fire scene, pending the arrival of Fire Department personnel, they shall:

- Immediately send an alarm or make certain that one has been sent.
- Warn occupants of the burning building; drop fire escape ladders; and assist occupants to the street.
- Not enter the burning building except to save a human life. If necessary to enter a burning building, personnel should;
  - . Make a quick visual survey to determine the location of -- the fire, fire escapes, and possible escape routes to adjoining buildings.
  - . Not run. Heavy breathing causes higher absorption of carbon monoxide.
  - . Crawl, don't walk, when in thick smoke. Hot gases rise.
  - . Keep doors and windows closed to exclude oxygen. However, if a stairway is on fire open the scuttle or door to the roof to prevent mushrooming of flames through apartment doors.
  - . Feel the surface of doors before opening. If the door is hot, ~~stand aside and kick it open to prevent hot flames and gases, rushing out under pressure, from searing the body and lungs.~~
  - . To force a door, break a panel near the lock.
  - . Keep near walls, where floors and stairs are strongest.
  - . Pull electrical switches or remove fuses.
  - . Don't go alone into a smoke filled building without a safety line and a man standing by, outside.



PAGE 2/GENERAL ORDER 43.4-92  
FIRE

If Fire Department personnel are present at the scene, police personnel shall:

- Render any assistance requested by the Fire Officer in command:
  - . Evacuate the burning or adjacent buildings.
  - . Assist Fire Department personnel as requested.
- Provide rope to assist in maintaining fire lines.
- Provide illumination of the scene, if needed.

Do not enter the premises for search operations unless requested by the Fire Officer in charge. If requested, safety helmets should be worn.

Remember, cooperating with, and rendering assistance to, Fire Department personnel, will expedite fire-fighting operations and cause a reduction in injury or death and damage to property.

**GENERAL ORDER 43.5-92  
BOMB THREATS/EXPLOSIONS**

Upon responding to a bomb scare scene, police personnel shall, if possible, park their vehicles on the opposite side of the street from the involved location and, where practical, in a position that places a building between the vehicle and the reported location.

Responding personnel shall not transmit, either by portable or mobile radio, unless they are at least 150 feet from the concerned location.

The commanding officer, present at the scene, is in complete charge of the situation and is responsible for the implementation of proper procedures. Responding police personnel will confer with the officer in charge, to wit:

- Secure the assistance of building security and custodial personnel.
- Recommend an evacuation and identify an evacuation route.
- Prevent unauthorized persons from entering the evacuated area.
- Obtain a floor plan of the building, if possible.
- Establish search teams.
- Assign specific search areas to each Search Team; record assignments.
- Apprise Search Teams is a specific time of detonation had been given. If so and the premises is unoccupied, discontinue the search 20 minutes prior to the threatened time and do not resume the search until at least one (1) hour has elapsed from the threatened time.
- Utilizing building personnel on a volunteer basis, begin an orderly search of the proposed evacuation route.
- Subsequent to the evacuation route search, or in conjunction with it, give top priority to searching all public areas of the building.
- If no specific part of the building has been pinpointed as the target of the bomb threat, begin a search pattern starting from the uppermost floor to the basement, if feasible.

PAGE 2/GENERAL ORDER 43.5-92  
BOMB THREATS/EXPLOSIONS

- During the course of the search, do not use building elevators unless absolutely necessary. If an elevator must be used, use those which are not accessible to the public.
- If a suspected infernal device is located:
  - . Don Protective equipment.
  - . DO NOT TOUCH IT OR MOVE IT IN ANY MANNER.
  - . Notify the command post through another member or by telephone; do not use the portable radio.
  - . The supervisor in charge at the command post will request the response of - Bomb/Arson personnel, additional police for crowd and traffic control, and Fire Department standby equipment.
  - . Remove any flammable or potential fragmentary-type material from the area surrounding the device.
  - . Open doors and windows to allow escape of explosion pressures and reduce damage if there is detonation.
  - . Have power, gas, or fuel lines leading into the area, shut off.
  - . If the building has not already been evacuated, DIRECT that the evacuation take place in that portion of the building it is felt necessary (usually one (1) floor above and one (1) floor below).
  - . Keep all person at least 300 feet away from the device.
  - . Continue the search as other devices may have been secreted.
- Bomb Section personnel will assume charge of the situation upon their arrival and the supervisor in charge will abide by their instructions and recommendations.

Upon being notified that an explosion has occurred, the radio dispatcher, will dispatch the appropriate police personnel.

Responding police personnel shall perform the following functions:



PAGE 3/GENERAL ORDER 43.5-92  
BOMB THREATS/EXPLOSIONS

- Proceed to the scene without delay and assist in securing the area from intrusion by unofficial persons motivated by curiosity. The crime scene area must be roped off and all persons, not connected with emergency or investigative tasks, removed.
- Perform appropriate, standard disaster functions, i.e. -- provide illumination, assist representatives of other governmental agencies, etc.
- Assist Bomb and Arson Disposal investigators with one of the most vital phases of the investigation--the crime scene search. First, however, preliminary inspection and evaluation of the debris and standing structure should be conducted by appropriately trained personnel to insure the safety of all emergency and investigative manners.

Once the structure has been declared safe, the crime scene search must be conducted. It will include all debris, the remaining portions of the structure and the surrounding area. The primary objectives of the search are to establish:

- The nature of the bomb/explosion.
- The method of ignition.
- Other evidence which may assist in the identification and apprehension of the person or person involved.

The nature of the bomb may be determined as follows:

- If the explosive was lighter than air, as in the case of natural gas, the walls will be blown or bowed out near the ceiling.
- If the material was vapor heavier than air, the walls will be blown out near the floor.
- If the material was a solid with low order burning characteristics, there will be a noted pushing effect and a gap in the force path wherever it passed large fixed objects, such as upright posts.
- High order explosions, of which dynamite is the best example, create a local shattering effect at the center of the blast.



PAGE 4/GENERAL ORDER 43.5-92  
BOMB THREATS/EXPLOSIONS

The nature of the explosion material will give an indication of the type of igniting device and container to search for, e.g.--if it was a high order explosion, a blasting cap would be searched for.

Anything which is foreign to the immediate surroundings should be carefully collected, marked, and wrapped or tagged as per the directions of the member in charge of the investigation.

**GENERAL ORDER 43.6-92  
DANGEROUS CONDITIONS**

The Dangerous conditions for which operational guidelines have been prepared and outlined on the following pages, include:

Gas leaks  
Damaged live wires  
Water leaks  
Radioactive incidents

The above conditions are compounded during emergencies resulting from severe rain or snow storms, high winds or tides, and other natural or man-made emergencies. For this reason, it is essential that police personnel make preparations to cope with any eventuality which may develop in these situations.

Upon receiving notice that a severe storm is proceeding in the direction of or is expected to affect, the City of Gary, the Gary Police will take the following steps:

1. Each commander will assure that their vehicles have a full supply of gasoline.
2. Additional manpower will be activated, equipped, and placed into service in, or in proximity to, anticipated critical areas.
3. The commanding officer on duty will coordinate all emergency/rescue operations and maintain appropriate records.
4. Performing personnel will be alerted to the fact that they may have to perform extended tours.
5. Critical areas will be continually monitored by officer who will keep the commanding officer appraised of changing conditions.

A summary of the problems which should be anticipated in situations of this kind is as follows:

1. Rescue and evacuation of persons from storm-lashed areas.
2. Overtaxed ambulance services necessitating the possible use of police vehicles to transport the sick and injured.
3. Flood related hazards causing:
  - a. Buildings to be undetermined and in danger of collapsing.
  - b. Vehicles with occupants to become stranded in roadways.

PAGE 2/GENERAL ORDER 43.6-92  
DANGEROUS CONDITIONS

4. Weakened signs, marquees, etc., in danger of falling.
5. Fallen poles, trees, and overhead electrical wires.
6. Loss of electrical power over a large area and the attendant loss of electrical power to vital institutions.

**GENERAL ORDER 43.7-92**  
**GAS LEAKS**

The police action to be taken in cases where dangerous gases are involved would depend on the following conditions:

1. Type of gas involved (poisonous, flammable, suffocating).
2. Amount of gas released.
3. Area involved (size - residential or commercial).
4. Number of persons affected (overcome, dead, evacuation necessity).
5. Wind direction and velocity.
6. Police personnel responding to gas leak situations should initiate the following:
  - a. Contact appropriate department - NIPSCO will send personnel to turn off gas.
  - b. Contact the Fire Department, inform them of the gas leak.
7. Officer should not enter into gas leak area except to save a human life and only if fire personnel has not arrived.
8. If necessary to enter gas leak area police personnel should observe the following guidelines.
9. Before entering the area:
  - a. Neutralize any possible static electricity on your body by touching a grounding surface.
  - b. Make a visual survey to determine an avenue of escape in the event such a necessity arises.
  - c. Should not wear gas masks. Remember, tear gas masks are ineffective.
  - d. Secure a life line to your person manned by another member outside the gaseous area. Set up signals, i.e.-- slack off; pull out.



PAGE 2/GENERAL ORDER 43.7-92  
GAS LEAKS

10. Use extreme caution when opening doors in the gassed area to avoid possible sparking. Do not ring the doorbell, light matches, or switch on flashlights or room lights. Be careful not to strike metal equipment against metal objects in the area.
11. Do not open metal-casement type windows; break the glass with a nightstick or other non-metallic object.
12. Establish a search pattern within the area to avoid search duplication. Ventilate as you search.
13. If drowsiness, difficulty in breathing, or a ringing sensation in the ears, is experienced, immediately signal to be pulled out. Additionally, leave the area if you experience any of the following early symptoms of gas poisoning--headache, vomiting, mental confusion, or loss of muscular coordination.
14. Immediately remove victims to a gas-free area and administer appropriate first aid measures.

It should be noted that if gas valves have been turned off, do not allow them to be turned on under any circumstances except by a representative of the appropriate utility company.

**GENERAL ORDER 43.8-92  
DAMAGED LIVE WIRES**

Serious hazards could result if overhead, live wires sag or fall as a result of icing, windstorm, lightning, broken poles, or other reasons. If the wire falls on a conductive object such as a metal fence, railroad tracks, or the like, the electricity will be conducted to other points, creating additional hazards.

Upon arriving at a fallen wire incident, police personnel shall:

1. Assure that NIPSCO power company has been notified.
2. Park their vehicle a safe distance from the transmitted location, particularly at night and during storms when vision is impaired.
3. Exercise care when exiting the vehicle. A live wire may be nearby, or the vehicle may be energized through contact with the wire or a conductor. Do not exit the vehicle before examining the area.
4. If there is any chance that the vehicle has become electrically energized, do not attempt to leave it or drive out from under a wire. The wire may become grounded, electrocuting the occupants or causing the vehicle to burn. Remain in the vehicle until rescued. (A weighted rope can be utilized to remove live wires from vehicles).
5. If the situation dictates that you leave the vehicle (fire, etc.), do not step out--jump clear and make sure that both hands and feet are free of the vehicle when contact is made with the ground.

Police personnel shall assist Northern Indiana Public Service Company (NIPSCO) in guarding fallen wires, or objects which may be in contact with the wires, until the arrival of a power company representative. In the performance of this function, officers shall:

1. Treat all fallen wires as live wires. Remember, the fact that wires do not sputter or spark is no indication that they are dead.
2. Rope off the area and prevent unauthorized encroachment.
3. Unless a life is at stake, do not go within six (6) feet of any fallen wire.

PAGE 2/GENERAL ORDER 43.8-92  
DAMAGED LIVE WIRES

If the situation dictates immediate action, officers shall -- prior to handling wires -- don insulated electrical gloves (rubber inserts covered by leather gloves) and insulate themselves against the ground by standing on a spare tire, backboard, or dry cardboard or newspaper. If the victim is in contact with the energized wire or object, the fundamental requirement for his safe removal is to avoid touching the victim or wire with any tool which could conduct electricity to the rescuer.

If it is imperative that wires be cut, the following procedures will be observed:

1. Only cut wires to minimize the hazard to any victim or bystander or to gain access to a disaster area.
2. Use only approved cutting equipment, i.e. -- insulated cutters, long handled axes, etc.

Do not touch any victim until he has been removed a distance of at least six feet from the wire. Then, administer appropriate first aid treatment and have victim immediately transported to a hospital.



**GENERAL ORDER 43.9-92  
WATER LEAKS**

Basically, the water leak assignments to which police personnel respond, fall into two (2) broad categories -- street water leaks and building water leaks.

Street water leaks, which usually involve a broken water main or a fire hydrant, are handled as follows:

1. Upon arrival at the scene, the officers will assure the Gary Hobart Water Company has been notified.
2. While awaiting the response of the Gary Hobart Water Company, personnel shall:
  - a. safeguard the immediate area of the leak.
  - b. divert vehicular and pedestrian traffic,
  - c. survey the immediate area of the leak, to ascertain locations affected.
  - d. evacuate buildings in which structural defects may develop as a result of the leak.
  - e. assure that all appropriate governmental departments and agencies have been notified.
3. If a fire hydrant is leaking:
  - a. attempt to tighten the screw cap with a hydrant wrench.
  - b. if the gate valve of the hydrant is stripped, or the leak cannot be stopped by conventional means, notify the Gary Hobart Water Company.

If a combination of the leak and a clogged drain is causing flooding conditions, ~~NEVER ATTEMPT TO CLEAR THE DRAIN WITH YOUR BARE HANDS.~~ The suction could pull you in.

Building water leaks, which usually involve broken water pipes or sprinkler systems, are handled as follows:

1. If the leak is a result of a broken pipe, locate the break (sometimes difficult because of flooding conditions) and close the shut-off valve between the break and the water supply source. If a boiler is affected by the water shut-off, it too must be shut down to eliminate any chance of an explosion -- particularly if the boiler is coal-fed.



PAGE 2/GENERAL ORDER 43.9-92  
WATER LEAKS

2. Leaks involving sprinkler systems sometimes present a problem due to the time expended in tracing shut off valves, particularly if an auxiliary water supply system, is involved. The Fire Department dispatcher will be notified whenever a sprinkler system has been shut off.

Building water leak hazards, for which officers should be prepared to encounter and overcome, include:

1. Severe drops in the floor of a flooded basement.
2. Structural defects which may cause floors, or even the building itself, to collapse.
3. The electrical conducting capability of water, especially in flooded basements.

Every effort will be made to correct building water leaks by shutting off secondary valves. Only if the condition is not corrected in this manner, will the valve controlling the water supply into the building be closed.

**GENERAL ORDER 43.10-92  
RADIOACTIVE/HAZARDOUS MATERIALS INCIDENTS**

In emergency cases involving radiation, The Gary Police Department will be among the first to arrive at a radiological incident. It is, therefore, incumbent upon them to be familiar with the hazards of radiation, the use of radiation detection instruments, and procedures to reduce hazards.

The extent of radiation hazards depends upon several factors:

1. The type of radiation emitted.
2. Its energy.
3. The physical and biological half-life of the material.
4. The radiosensitivity of the organ where the material localizes.

The three (3) most common types of radiation are:

1. **Gamma Radiation:** A long range, highly penetrating type of external radiation, similar to x-rays. Heavy, dense substances (lead) are required as a shield or the radiation can be reduced by one half by using steel, concrete, hardwood or earth as a shield.
2. **Beta Radiation:** Of shorter range and less penetrating than Gamma. It can be shielded by 1/3" aluminum or equivalent thickness in materials of lesser density.
3. **Alpha Radiation:** Only an internal hazard with extremely short range and little penetrating power. It can be shielded by a thin sheet of paper and cannot penetrate the skin.

To prevent and control contamination caused by internal radiation, protective garments and self contained breathing apparatus must be worn. Protection against external radiation can be accomplished by one, or a combination, of three fundamental factors:

1. Controlling the length of exposure time.
2. Controlling the distance between the individual and the source.
3. Shielding the individual from the source with radiation absorbing materials.

PAGE 2/GENERAL ORDER 43.10-92  
RADIOACTIVE/HAZARDOUS MATERIALS INCIDENTS

Repeated doses of radiation are accumulative. As a rule of thumb, the following should be kept in mind:

1. Exposure of 25r (25 roentgens) to 100r will result in no radiation sickness, although slight, temporary blood changes will occur.
2. Exposure of 100r to 200r will result in slight radiation sickness and blood changes, with delayed recovery. Delayed effects may shorten life expectancy by 1%.

The following equipment is used to measure radiation intensity:

1. Ion chamber: Designed for high radiation intensities, it measures the dose rate of radiation in roentgens per hour.
2. Geiger-Mueller Counter: Measures dose rate in Milliroentgens per hour.
3. Dosimeter: Shaped like a large fountain pen, it measures the total amount of radiation to which they are exposed in any time interval, in Milliroentgens.
4. Film Badge: Like the dosimeter, indicates cumulative dosage but cannot be read until the film has been developed.

Radiological surveys will be conducted by police personnel at the scene of the following incidents:

1. Airplane crashes.
2. Explosions.
3. Any incident in which radioactive material is or is presumed to be involved, i.e. truck accidents, train disasters, etc.



**GENERAL ORDER 43.11-92  
OPERATIONAL PROCEDURES/RADIATION INCIDENTS**

The Radio Dispatcher shall dispatch patrol cars to a radioactive incident. Additionally, they shall notify the Department of Health, the Fire Department, Civil Defense and the Poison Control Center. The Fire Department shall assume charge of all radiation incidents, be responsible for decontaminating the area, and personnel assigned thereto shall be the only persons authorized to move suspected radioactive material.

Police personnel assisting at or involved in a radioactive incident, shall:

1. Park their vehicles so as to avoid contamination from dust, smoke, or flow off water (windward side of the accident of high ground).
2. Assist in the establishment of a Frozen Area as follows:
  - a. On the street: A five (5) foot radius, except in the following cases:
    1. 25 foot radius if the incident involves a fire. This distance will be increased, if necessary to avoid exposure of persons to smoke or fumes emanating from the fire.
    2. 300 feet radius if a military shipment is involved. However, if a courier is accompanying the shipment, the Frozen Area shall be established as per his/her instructions.
  - b. In a building: The room in which the source is located. If fire is involved, all areas whereat one would be exposed to smoke or fumes.
3. Measure the amount of radioactivity present, as follows; starting at an initial distance of 100 feet from the source:
  - a. Obtain a reading in Roentgens with the Ion chamber. If a positive reading registers, immediately withdraw to a point at which the reading is zero.
  - b. From point zero on the Ion chamber, approach the radioactive source with the Geiger Counter until a positive reading in Milliroentgens appears and reestablish the Frozen Area at this point. The readings at least every fifteen (15) minutes.

227



PAGE 2/GENERAL 43.11-92  
OPERATIONAL PROCEDURES/RADIATION INCIDENTS

4. Report readings obtained, and the time and distance from the source, to the supervisor in charge for entry in the Command Post Log.
5. If necessary to enter the Frozen Area to effect rescues, don protective garments.
6. Refrain from smoking, eating and drinking in the contaminated area.
7. Request persons believed to have been exposed, to remain on the scene. If they refuse, obtain their names and addresses prior to their departure.
8. Render necessary assistance to the assisting agency representatives when they arrive at the scene.
9. Remove and monitor all protective clothing at the termination of the incident. All members shall be monitored for radioactivity before leaving the scene and shall abide by instructions received.
10. Monitor and, if necessary, decontaminate police equipment within the Frozen Area before attempting to remove it.

**GENERAL ORDER 43.12-92**  
**TABLE OF ISOLATION AND EVACUATION DISTANCES**

| NAME OF<br>MATERIAL<br>SPILLING OR<br>LEAKING (LD No.)  | INITIAL ISOLATION   | INITIAL EVACUATION  |  |                 |
|---|---|---|--|-----------------|
|   | SPILL or LEAK FROM<br>(drum, smaller container,<br>or small leak from tank) | LARGE SPILL FROM A TANK<br>(or from many containers, drums, etc.) |  |                 |
|   | ISOLATE in all<br>Directions<br>feet  | FIRST<br>ISOLATE in all<br>Directions<br>feet                     | THEN EVACUATE IN A<br>DOWNWIND DIRECTION<br>width<br>miles | Length<br>miles |
| Acrolein (1092)   | 550   | 1140  | 3.0  | 4.7             |
| Acrylonitrile (1093)  | 30  | 60  | 0.3  | 0.3             |
| Ammonia,<br>anhydrous (1003)  | 100   | 200   | 0.4  | 0.7             |
| Ammonia solution, not<br>less than 44% (2073)   | 100   | 200   | 0.4  | 0.7             |
| Boron trifluoride (1008)  | 320   | 670   | 1.7  | 2.6             |
| Bromine (1744)  | 300   | 630   | 1.3  | 2.4             |
| Carbon disulfide (1131)<br>Carbon disulfide (1131)  | 30  | 70  | 0.3  | 0.3             |
| Chlorine (1017)   | 230   | 520   | 1.3  | 2.0             |
| Dimethylamine,<br>anhydrous (1032)  | 80  | 170   | 0.4  | 0.6             |
| Dimethyl sulfate (1395)   | 80  | 170   | 1.4  | 2.2             |
| Epichlorohydrin (2023)  | 40  | 10  | 0.3  | 0.3             |
| Ethyleneimine (1183)  | 220   | 370   | 1.4  | 2.2             |
| Ethylene oxide (1040)   | 40  | 70  | 0.3  | 0.3             |
| Fluorine, liquid (1045)   | 460   | 880   | 2.5  | 3.9             |
| Hydrochloric acid,<br>anhydrous (1030)<br>Hydrogen chloride,<br>anhydrous (1030)<br>Hydrogen chloride,<br>refrigerated<br>liquid (2186) | 190   | 430   | 1.0  | 1.6             |
| Hydrocyanic acid (1031)<br>Hydrogen cyanide,<br>anhydrous (1031)  | 10  | 100   | 0.3  | 0.7             |
| Hydrofluoric acid (1790)<br>Hydrogen fluoride,<br>anhydrous (1032)  | 240   | 490   | 1.2  | 1.8             |

PAGE 2/GENERAL ORDER 43.12-92  
TABLE OF ISOLATION AND EVACUATION DISTANCES

| NAME OF MATERIAL<br>SPILLING OR<br>LEAKING (ID No.)  | INITIAL ISOLATION   | INITIAL EVACUATION  |  |                 |
|--|---|---|--|-----------------|
|  | SPILL or LEAK FROM<br>(drum, smaller container,<br>or small leak from tank) | LARGE SPILL FROM A TANK<br>(or from many containers, drums, etc.) |  |                 |
|  | ISOLATE in all<br>Directions<br>feet  | FIRST<br>ISOLATE in all<br>Directions<br>feet                     | THEN EVACUATE IN A<br>DOWNWIND DIRECTION<br>Width<br>miles | Length<br>miles |
| Hydrogen sulfide (1033)  | 120   | 140   | 0.6  | 0.9             |
| Methylamine,<br>anhydrous (1041)<br>Monomethylamine,<br>anhydrous (1041)                     | 110   | 120   | 0.5  | 0.8             |
| Methyl bromide (1042)  | 30  | 90  | 0.2  | 0.3             |
| Methyl chloride (1043)   | 30  | 40  | 0.1  | 0.2             |
| Methyl mercaptan (1044)  | 170   | 770   | 1.0  | 3.0             |
| Methyl sulfate (1045)  | 80  | 170   | 1.4  | 2.2             |
| Nitric acid, fuming<br>Nitric acid, red<br>fuming (1032)                                     | 100   | 210   | 0.5  | 0.7             |
| Nitric oxide (1040)<br>Nitrogen dioxide (1047)<br>Nitrogen tetroxide,<br>and mixtures (1047) | 110   | 220   | 0.5  | 0.8             |
| Oleum (1031)   | 280   | 580   | 1.5  | 2.2             |
| Perchloromethyl-<br>mercaptan (1070)   | 220   | 450   | 1.1  | 1.6             |
| Phosgene (1074)  | 400   | 1250  | 3.3  | 5.2             |
| Phosphorus<br>trichloride (1009)   | 110   | 220   | 0.3  | 0.6             |
| Pyrosulfuric acid (1031)   | 280   | 580   | 1.5  | 2.2             |
| Sulfur dioxide (1078)  | 100   | 220   | 0.3  | 0.6             |
| Sulfuric acid, fuming (1031)<br>Sulfuric anhydride (1079)<br>Sulfur trioxide (1079)          | 280   | 580   | 1.5  | 2.2             |
| Titanium<br>tetrachloride (1018)   | 30  | 60  | 0.2  | 0.2             |
| Trimethylamine,<br>anhydrous (1043)  | 90  | 170   | 0.4  | 0.6             |

230

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**GENERAL ORDER 44-92  
CANINE PATROL**

**I. POLICY**

- A. Use of a canine in effecting an arrest constitutes either an actual or implied use of force. Therefore, police canine handlers and their supervisors will be fully aware of all facts and circumstances surrounding an incident before the decision is made to use a canine for other than deterrent or control purposes.
- B. Police dogs are tools that canine officers may use to effect an arrest when physical resistance to that arrest is met by the officer. Police officers may not use any more force than is necessary to overcome the resistance that is met.
- C. All dogs will be kept on lead, per City Ordinance, except in the course of building or field searches, or when warranted and justified for the apprehension of a fleeing criminal suspect or to prevent injury to the officer or another person.

**II. USE OF CANINES**

- A. The use of canine patrol is authorized for the following:
  - 1. To deter criminal activity and to assist in the prevention and detection of crime.
  - 2. To effect the arrest or prevent the escape of a person whom the police officer has probable cause to believe has committed a felony.
  - 3. To protect the officer or another person(s) from bodily injury.
- B. Canine teams will be used for the following:
  - 1. To search buildings where a possible unlawful entry is indicated or detected, or where a suspect may be hiding when such buildings are reasonably believed to be clear of innocent persons, and after clear of innocent persons and after clear warning by police is given prior to deployment of the dog. When the services of the K-9 team are anticipated for a search, every effort will be made by the first police officers on the scene to



PAGE 2/GENERAL ORDER 44-92  
CANINE PATROL

avoid contamination of the area with human scent by preventing any unnecessary persons from entering the area, including police officers.

- a. Patrol Supervisors will respond to assignments of this nature. In the event a canine team is not available, and will not be available in a reasonable amount of time, the supervisor on the scene will ensure a building search is conducted by district patrol personnel.
2. To track suspects, lost or missing persons, hidden implements of crime (s) or other contraband, explosive devices, or narcotics.
- C. Use of canine patrol for deterrent purposes at specified events for crowd control or to control access to any facility will only be upon approval of Captain and above.
- D. Any use of canine teams not specifically authorized above will be effected only upon the approval of the Police Chief of designee.

III. RESPONSIBILITIES

- A. Canine Officer will:
  1. Utilize his/her assigned dog in accordance with Section II of this directive.
  2. Be fully responsible and accountable for all actions of the assigned dog while in the performance of duty and during off-duty hours.
  3. When receiving an order from a superior to use the dog in a manner which would conflict with departmental policy or in a manner which would be unsafe for the dog, call such conflict to the attention of the superior and notify his/her immediate supervisor. A report will be prepared and submitted through channels to the Uniform Division, describing the incident.

232

PAGE 3/GENERAL ORDER 44-92  
CANINE PATROL

4. Maintain his/her assigned canine at a high level of proficiency and peak physical condition.
5. Immediately notify Uniform Division supervisor when his/her dog is involved in any incident on or off duty, and follow the procedures outline in Section IV.
6. Under the direction of the Uniform Division Supervisor or Shift Commander, return his/her dog to the Canine Unit when becoming ill or injured.
  - a. Until certified capable of handling the dog by a competent authority, the handler will not be permitted to perform with the dog as a team.
  - b. Upon returning to duty and being certified capable of handling the dog, the team will be reevaluated by a canine trainer and supervisor.
  - c. Should a determination be made that the officer cannot perform the duties of a handler without aggravating a past injury or illness, he/she will be excluded from the position of canine handler.
7. Report all injuries and illnesses suffered by the canine dog to the Commanding Officer, Canine Unit, and the departmental veterinarian as soon as possible.
  - a. All illnesses or injuries of an emergency nature will be immediately reported to the department veterinarian at the Canine Unit.
8. On foot patrol, the canine officer will not leave his/her dog unattended in a public place.
9. Whenever a canine officer leaves his/her dog unattended in a public place.
10. While on foot patrol, the canine officer will request Police Radio to send a non-canine officer to enforce minor ~~offenses~~ unless immediate action is necessary. For example: intoxication, smoking on the transit system, ~~fare-jumping~~, sleeping in



PAGE 4/GENERAL ORDER 44-92  
CANINE PATROL

the concourse or on the transit system, or other similar offenses.

B. Patrol Supervisor will:

1. Supervise and deploy canine teams.
2. Be available to respond to serious situations involving canine teams to ensure that no directive procedures are violated and to instruct the individual handler.
3. Make recommendations to the Commanding Officer, Uniform Division of any discrepancies.
4. Upon responding to a canine incident, confer with the district patrol supervisor, if one is present.
5. Be responsible for evaluating the performance of canine teams in the field.
6. Ensure that required canine incident reports are submitted to the Commanding Officer, Uniform Division.
7. When a canine handler becomes injured or ill, follow directions in Section III-A.6. The dog is then held at a Kennel until handler has been certified as being capable of handling the dog.
8. Canine Sergeant will not be accompanied by a dog.

C. The first supervisor (canine or non-canine) on the scene of the incident where a building search will be conducted and where a canine team has been requested will:

1. Inform canine handler as to point of entry, known hazards within the building, etc.
2. Ensure that possible routes of escape from building are covered until search is completed.
3. Ensure that no person, including police, enter the building during the search.
4. Resume all unnecessary manpower and equipment.

PAGE 5/GENERAL ORDER 44-92  
CANINE PATROL

D. Uniform Division Commander will:

1. Evaluate each incident and submit recommendations Deputy Chief, Training Unit. (See Section IV, page 5)
2. Ensure that assigned canine teams are properly supervised, deployed, and utilized.
3. Ensure that all canine incident reports are forwarded through the chain of command to the Training Unit, within 48 hours of the incident.
4. Ensure that all ACTIVE canine teams receive a minimum of three (3) days in-service training four (4) times each year. Evaluation of the officer and the canine as to performance, dependability, stability, and expertise will be made during each session.
5. Ensure that all dogs are inspected on a regular basis to maintain fitness, health, and capability to function in a patrol status.
6. Evaluate the fitness of handler and/or canine, and evaluate the need for training, if any.
7. Direct the canine officer to return his/her dog to the Canine Unit when he/she becomes ill or injured and cannot perform with the dog as a team.

E. All canine incidents involving a bit or damage to property will be investigated by the Internal Affairs Division. The assigned investigator will:

1. Conduct a complete investigation and prepare all required reports.
2. Forward a copy of the Investigation Report to the Commanding Officer, Training.



PAGE 6/GENERAL ORDER 44-92  
CANINE PATROL

3. Include in the report a description of the use of the canine and circumstances surrounding such use. The report will be specific and detailed, with all facts relative to the incident included in the report.
4. Include photographs of the damage/injury which will remain a part of the investigative record.
- F. The investigating division supervisor will ensure compliance with provisions outlined in Section III-E.

IV. REPORTING OF INCIDENTS

- A. Anytime, on or off-duty, that a city-owned dog is involved in any incident resulting in injury or damage to property (including the handler and/or member of the handler's family), the handler must submit Incident Report (Case Number must be on all reports). Report will be submitted by the Commanding Officer, Uniform Division, and a copy forwarded by the commander to the Deputy Chief, Training Unit to arrive no later than 48 hours after the incident. Contents of the report must be specific. If the action of the bitten individual caused the reaction of the dog, so state, and describe.
  1. Personnel of the district of occurrence will refer to Directive "Reporting Non-Vehicular Accidents When City May be Liable," and comply with its contents and the City Attorney where law suits are involved.
- B. All incidents involving a bit or damage to property will be investigated by the Internal Affairs Division of occurrence, and an Investigation Report will be submitted, with a copy forwarded to the Commanding Officer, Training Division will include photographs of the damage/injury, which will remain part of the investigative record.

**PAGE 7/GENERAL ORDER 44-92  
CANINE PATROL**

- C. Further, on all assignments when the canine is used or has had any effect on a specific situation, the handler must submit a separate report, with the same case number, through channels, to Uniform Division, Training Division. The report must be complete, thorough and describe in as much detail as possible the nature of the assignment, to what use the dog was put, and the results. (Those situations which demand reports include, but are not limited to: arrests, apprehensions, building searches, tracking, disorderly crowds, disturbances, pursuits, narcotic detection, exit/entrance control, explosive device detection).
- D. Radio Room Supervisor will notify the Canine Unit by telephone as soon as the facts are available regarding any canine incident. This information will be noted on the daily bulletin.

**V. EVALUATION OF CANINE INCIDENTS**

- A. The Commanding Officer, Training Division will:
  - 1. Maintain records of all incidents involving canine teams.
  - 2. Evaluate all incidents to ensure compliance with departmental policies and procedures, and submit a monthly report to the police Commissioner, through channels, regarding any such violations.
- B. These reports will be reviewed by a panel appointed by the Police Commissioner, who will recommend to him appropriate action, if necessary.

**VI. REQUEST FOR USE OF CANINES BY OUTSIDE POLICE DEPARTMENT OR AGENCIES**

- A. Outside requests by other police departments of agencies for canine services will be upon the authorization of the Chief of Police or Deputy Chief.

**VIII. RESPONSIBILITY**

- A. It will be the responsibility of all canine patrol officers as well as their Unit Supervisors and Commanders, to be familiar with this directive, and to comply with its provisions.



**GENERAL ORDER 45-92  
SEXUAL HARASSMENT**

**PURPOSE:**

It is the purpose of this policy to affirmatively raise the subject of sexual harassment, to express strong disapproval against such actions, to identify a disclosure system whereby employees have the right to raise sexual harassment issues, to establish an investigative procedure for such alleged misconduct, to provide appropriate sanctions, and to identify some of the procedures that will be used to sensitize all concerned.

**POLICY:**

Sexual harassment is a form of employee misconduct which undermines the integrity of the employee relationship. All employees must be allowed to work in an environment free unsolicited and unwelcome sexual overtones. Sexual harassment for purposes of this policy is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment; submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or such conduct has the purpose or effect of unreasonably interfering with an individual work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment would include, but not be limited to actions by either gender such as: sex oriented verbal kidding or abuse, subtle pressure for sexual activity, physical conduct such as patting, pinching, or constant brushing against another's body, and explicit demands for sexual favors, whether or not accompanied by implied or overt promises of preferential treatment or threats concerning an individual's employment status.

Examples of potentially sexually harassing behavior which may constitute sexual harassment, by either gender, depending upon the circumstances and context, and the perspective of the victim would include but not be limited to referring to an adult as a girl, doll, hunk, babe, baby, broad or bitch; demanding or implying that sexual favors could be exchanged for promotions, favorable reviews or ratings continued employment or favorable assignments; whistling at someone, cat-calls; making sexual comments about a person's body; making sexual comments or innuendos; turning work discussion to sexual topics without necessity to do so; telling sexual jokes or stories; asking about sexual fantasies, preferences or history; asking personal questions about social or sexual life; making



PAGE 2  
GENERAL ORDER 45-92  
SEXUAL HARASSMENT

sexual comments about a person's clothing or body, etc.

The Department through the office of the Chief of Police shall investigate complaints, or allegations, from employees of the department concerning any violations of Civil Rights laws on employment, assignment and promotion practices; included in such violative practices is sexual harassment.

Any employee who believes they are the subject of sexual harassment and wishes to file a complaint shall contact the Department's Internal Affairs Officer in person, by telephone or in writing. The Internal Affairs Officer and/or any command or supervisory personnel shall be responsible to insure that all incidents of sexual harassment are reported to the office of the Chief of Police.

Persons submitting complaints of sexual harassment are assured that thorough investigation of such complaints will be conducted. Information collected during such an investigation will be considered confidential and will not be disclosed to persons not involved directly in conducting the investigation and determining what action, if any to take in response to the complaint.

If, following a complaint of sexual harassment, an investigation reveals that some act of sexual harassment has occurred the person who has violated the above-described prohibition of sexual harassment will be subject to sanctions or penalties. The sanction or penalty administered under this policy will depend on all circumstances, including the offending employee's prior work record and specifics regarding the nature of the violation. It should be understood that reprimand, fine suspension and/or termination of employment may very well be the penalty administered to persons who violate this policy.

No adverse employment action or retaliation will be taken against any employee who reports any act of sexual harassment, or who gives information during the course of an investigation by the Office of the Chief or the Internal Affairs Division.

The officer charged with the responsibility of investigating any complaint of sexual harassment shall reduce the findings and recommendations for resolving the complaint to writing, and submit such report to the Chief of Police for final disposition within thirty (30) calendar days following the completion of the investigation.



PAGE 3/GENERAL ORDER 45-92  
SEXUAL HARASSMENT

To assure that all employees of this Department are aware of this policy and the Department's commitment to the establishment and maintenance of a working environment free from sexual harassment, copies of this policy will be placed permanently on all appropriate bulletin boards.

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535  
JUL 1 1992  
FBI/DOJ

246

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**GENERAL ORDER 46-92  
STRIP SEARCHES**

**PURPOSE:**

To establish policies and procedures to minimize the risk of introduction of contraband into the Gary Police Department on the person of any prisoner or inmate.

**STATEMENT OF POLICY:**

It is the policy of the Gary Police Department to conduct strip searches of persons only when police or correctional officers have reason to believe that an inmate or prisoner may have secreted any item of contraband on his person.

**PROCEDURE:**

- I. The Turn Commander shall authorize all strip searches with particular sensitivity to circumstances in which inmates or prisoners may be within the proximity of persons or articles from outside of the institution, e.g., upon receipt from court, from other institutions, when apprehended from an escape attempt, as well as after participation in any kind of internal disturbances.
- II. When a strip search is conducted the following will be observed:
  - a. Police or Correctional Officers shall conduct all strip searches in a private area, whenever possible. Strip searches shall not be conducted within the view of other inmates or the public in the absence of an emergency.
  - b. Strip searching should only be performed by two (2) officers of the same sex as the subject. One (1) officer will observe while the other conducts the search.
  - c. The prisoner or inmate will remove all articles from the pockets of his/her clothing and place them in a receptacle, on a table, or on the floor.

GENERAL ORDER 46-92  
PAGE 2  
DEPARTMENTAL POLICY/STRIP SEARCHES

- d. The prisoner or inmate will be instructed to move a few paces away.
  1. The prisoner or inmate shall be placed in a position such that he/she cannot palm articles from retrieval after search.
  2. The search will include running the fingers through the hair or the use of a large toothed comb,
  3. The entire body should be checked thoroughly including around the inside the ears, inside the nose, inside the mouth (tongue raised and dentures removed), hand (between fingers), arms, armpits, trunk, the pubic area (males should be asked to lift genitals), the buttocks, the rectal area (inmates will turn around, bend over and spread the buttocks for comprehensive examination), the inner and outer parts of the legs, and the feet (between the toes and soles).
  4. After completion of the body search, every article of clothing and personal property must be thoroughly examined.
  5. Prisoners or inmates shall not be strip searched by Police or Correctional Officers of the opposite sex. All strip searches shall be conducted with dignity and the search shall only be to the extent necessary to mitigate against the threat of concealed contraband.

III. Records shall be maintained of each strip search conducted:

- a. The Turn Commander shall designate one officer who participated in the strip search to compile an Incident Report.
- b. The Warden or Correctional Officer in charge shall record the strip search in an appropriate log book. This entry shall include a minimum of the following information: the time inmate or prisoner was searched, the identity of the inmate or prisoner searched, and the identity of the officers who conducted the search.



GENERAL ORDER 46-92

PAGE 3

DEPARTMENTAL POLICY/STRIP SEARCHES

- c. Police or Correctional Officers shall initiate any appropriate disciplinary action or prosecution against an inmate or prisoner upon arrival of the Turn Commander for any contraband found on any prisoner or inmate by preparing a Gary Police Uniform Offense Report. In all such cases, contraband found during the conduct of the search shall be treated as evidence.